



518507

8/9/90

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MIDWEST SOLVENT RECOVERY INC.;
MIDWEST INDUSTRIAL WASTE DISPOSAL
COMPANY, INC.; INDUSTRIAL TECTONICS,
INC.; V & E CORPORATION; ERNEST DE
HART; EDWARD D. CONLEY; HELGA C.
CONLEY; LOVIE DE HART; CHARLES A.
LICHT; DAVID E. LICHT; DELORES LICHT;
EUGENE KLISIAK; JEANETTE KLISIAK;
LUTHER C. BLOOMBERG; ROBERT J. DAW-
SON, JR.; JOHN MILETICH; MARY
MILETICH; PENN CENTRAL CORPORATION;
INSILCO CORPORATION; RUST-OLEUM, INC.;
ZENITH RADIO CORPORATION; STANDARD T
CHEMICAL COMPANY, INC.; AMERICAN CAN
COMPANY, INC.; PRE FINISH METALS, INC.;
PREMIER COATINGS, INC.; MOTOROLA, INC.;
and DESOTO, INC.;

Defendants.

AMERICAN CAN COMPANY, INC.,
DESOTO, INC., INSILCO CORPORATION,
MOTOROLA, INC., PRE FINISH METALS,
INC., PREMIER COATINGS, INC.,
RUST-OLEUM, INC., STANDARD T
CHEMICAL COMPANY, INC.,
ZENITH RADIO CORPORATION, JOHN
MILETICH, MARY MILETICH and THE
PENN CENTRAL CORPORATION,

Third-Party Plaintiffs,

vs.

ACCUTRONICS, ACTIVE SERVICE CORP.,
AMERICAN NAMEPLATE & DECORATING CO

90-17-1-1
AUG 27 1990

DEPARTMENT

LANDS DIVISION
ENFORCEMENT RECORD

1	AMERICAN PRINTER & LITHOGRAPHER CO.,)
	AMERICAN RIVET COMPANY, APECO,)
2	APPROVED INDUSTRIAL REMOVAL, INC.,)
	ARMOUR PHARMACEUTICAL, ARTISAN HAND)
3	PRINTS, ASPLAND CHEMICAL CO.,)
	AVENUE TOWING COMPANY, BARR &)
4	MILES, INC., BELDEN ELECTRICAL)
	PRODUCTS DIV. OF COOPER INDUSTRIES,)
5	INC., BRETFORD MANUFACTURING, INC.,)
	BUTLER SPECIALTY COMPANY, INC.,)
6	BY PRODUCTS MANAGEMENT, CALUMET)
	CONTAINER, CARGILL, INC.,)
7	CHEMALLOY DIVISION OF FISHER- CALO)
	CHEMICAL CO., CHICAGO ETCHING CORP.,)
8	CHICAGO NAMEPLATE COMPANY,)
	CHICAGO ROTOPRINT CO.,)
9	C & C INDUSTRIAL MAINTENANCE CORP.,)
	CITY OF GARY, INDIANA, C.P. CLARE)
10	DIVISION OF GENERAL INSTRUMENTS)
	CORP., C.P. HALL CO.,)
11	C.P. INORGANICS, COMMANDER PACKAGING,)
	CONNOR FOREST INDUSTRIES, CONSERVA-)
12	TION CHEMICAL, CONSUMERS PAINT)
	FACTORY, INC., CONTINENTAL)
13	WHITE CAP DIVISION OF CONTINENTAL)
	CAN COMPANY, CONVERSIONS BY GERRING,)
14	COUNTY OF DU PAGE, ILLINOIS,)
	CRONAME, INC., CROWN CORK & SEAL)
15	CO., INC., CULLIGAN INTERNATIONAL)
	COMPANY, CULLIGAN WATER CON-)
16	DITIONING, INC., FRANK J. CURRAN,)
	CUSTOM METALS PROCESSING,)
17	DAP, INC. OF BEECHAM COSMETICS,)
	DAUBERT CHEMICAL COMPANY,)
18	DEUBLIN COMPANY, DOBSON CONSTRUCTION)
	INC., DUO FAST CORPORATION, DU-TONE)
19	CORP., HAROLD EGAN, ERCO HOUSEWARE)
	CO., EL-PAC, INC., EMBOSOGRAPH DIS-)
20	PLAY MFG. CO., ESS KAY ENAMELING, INC.,)
	ETHICON, INC., FELT PRODUCTS MFG. CO.,)
21	FLINT INK CORP., FURNAS ELECTRIC)
	CO., GEARMASTER DIVISION, EMERSON)
22	ELECTRIC, THE GILBERT & BENNETT)
	MFG. CO., GLD LIQUID DISPOSAL,)
23	HENRY PRATT COMPANY, J.M. HUBER)
	CORPORATION, HYDRITE CHEMICAL CO.,)
24	INTAGLIO CYLINDER SERVICE, INC.,)

1 JOHNSON & JOHNSON, J & S TIN MILL)
 PRODUCTS, KMAACP MFG. CO., LANSING)
 2 SERVICE CORPORATION, LAUTTER)
 CHEMICAL, LIQUID DYNAMICS,)
 3 LIQUID WASTE, INCORPORATED,)
 STEVE MARTEL, MASONITE CORPO-)
 4 RATION, McHARTER CHEMICAL CO.,)
 METAL RECLAIMING CORPORATION,)
 5 METROPOLITAN CIRCUITS,)
 MIDWEST RECYCLING COMPANY, MONTGOMERY)
 6 TANK LINES, MORTON THIOKOL INC.,)
 MR. FRANK, INC., NAMSCO, INC.,)
 7 NATIONAL CAN CORPORATION, MAZ-DAR CO.,)
 NUCLEAR DATA, INC., PPG INDUSTRIES,)
 8 INC., PASLODE COMPANY, PIERCE & STEVENS)
 CHEMICAL CORP., PIONEER PAINT PRODUCTS,)
 9 PREMIER PAINT CO., PYLE-NATIONAL CO.,)
 R-LITE, REFLECTOR HARDWARE CORP.,)
 10 REGAL TUBE, RELIANCE UNIVERSAL, INC.,)
 RICHARDSON GRAPHICS, JOHN ROSCO,)
 11 ROZEMA INDUSTRIAL WASTE, ST. CHARLES)
 MANUFACTURING, SCHOLLE CORPORATION,)
 12 SCRAP HAULERS, SHERWIN WILLIAMS)
 COMPANY, SHELD COATINGS, INC.,)
 13 SIZE CONTROL COMPANY, SKIL CORPORA-)
 TION, SPECIAL COATINGS CO.,)
 14 SOUTHERN CALIFORNIA CHEMICAL,)
 SPECIALTY COATINGS, INC.,)
 15 SPOTNAILS, INC., STAR TRUCKING, STERN)
 ELECTRONICS, INC., JOE STRAUSNICK,)
 16 STUART CHEMICAL & PLANT, INC.,)
 SUMNER & MACE, SUN CHEMICAL,)
 17 SYNTech WASTE TREATMENT CENTER,)
 T.R.C., TEEPACK, INC., ALFRED TENNY,)
 18 THIELE-ENGDAHL, INC., THOMPSON)
 CHEMICALS, TIFFET CHEMICALS,)
 19 TOUNEY DISPOSAL, TRIPLE S. ETCHANTS,)
 UNIROVAL, INC., UNITED RESIN AD-)
 20 HESIVES, INC., U.S. ENVELOPE, U.S.)
 SCRAP AND DRUM, U.S. STEEL CORP., UNI-)
 21 VERSAL RESEARCH LABORATORIES, INC.,)
 UNIVERSAL TOOL & STAMPING COMPANY,)
 22 VANDER MOULEN DISPOSAL, VELSICOL)
 CHEMICAL CORP., VICTOR GASKET)
 23 DIVISION OF DANA CORPORATION,)
 WARNER ELECTRIC BRAKE & CLUCH CO.,)
 24 WARWICK CHEMICAL, WASTE RESEARCH &)

1 RECYCLING, XEROX CORPORATION, and)
2 other unidentified persons,)

3 Third-Party Defendants.)
4
5
6
7

8 DEPOSITION OF RICHARD E. ROICE

9 August 9, 1990
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5 The deposition of RICHARD EDWIN ROICE,
6 called for examination by the Defendants,
7 pursuant to notice and pursuant to the
8 provisions of the Federal Rules of Civil
9 Procedure of the United States District Courts,
10 pertaining to the taking of depositions for the
11 purpose of discovery, taken before Arnold N.
12 Goldstine, a Notary Public and Certified
13 Shorthand Reporter within and for the County of
14 Cook and State of Illinois, at 200 West Wacker
15 Drive, on August 9, 1990, commencing at the hour
16 of 8:45 o'clock a.m.

Mr. Alan S. Tenenbaum and
Mr. Leonard M. Gelman
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Environmental Enforcement Section
Land & Natural Resources Division
U.S. Department of Justice
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- and -

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appeared on behalf of Plaintiff,
United States of America;

1 **APPEARANCES (CONTINUED):**

2
3 Mr. Michael R. Blankshain
4 Wildman, Harrold, Allen & Dixon
5 225 West Wacker Drive
6 Chicago, Illinois 60606-1229

7 appeared on behalf of
8 Penn Central Corporation;

9
10 Mr. David Finch
11 McDermott, Will & Emery
12 227 West Monroe Street
13 Chicago, Illinois 60606-5096

14 appeared on behalf of Standard T
15 Chemical Company;

16 Mr. Carl B. Hillemann
17 Sonnenschein Nath & Rosenthal
18 One Mercantile Center
19 Suite 2600
20 St. Louis, Missouri 63101

21 appeared on behalf of
22 Desoto, Inc.;

23 Mr. James T. J. Keating
24 Law Offices of James T. J. Keating, P.C.
25 Printers Row
26 542 South Dearborn Street
27 Chicago, Illinois 60605

28 appeared on behalf of
29 Premier Coatings, Inc.

I N D E X

WITNESS:

RICHARD F. BOICE

Direct Examination

By Mr. Hill: 12

Cross Examination

By Mr. Hillemann: 83

By Mr. Finch: 110
159

Redirect Examination

By Mr. Hill: 184

E X H I B I T S

Cost Deposition Nos.

4 38

1 MR. TENENBAUM: Mike, you had asked
2 yesterday as to various matters pertaining to
3 natural resource damages.

4 MR. HILL: Right.

5 MR. TENENBAUM: I indicated yesterday that I
6 would make a statement about that. My statement
7 is the following.

8 We are not asserting in this action at
9 the present time claims for natural resource
10 damages and certain costs of natural resource
11 damages assessment.

12 I will note for the record that we have
13 no authority from the various parties to waive
14 or give up any such claims for costs and,
15 therefore, all such rights are reserved;
16 although, we are not saying at this time one way
17 or the other whether any such claims will
18 actually be asserted in the future or not.

19 We also refer you to section 122 J of
20 CERCLA for further information.

21 With respect to DOI costs listed in the
22 summaries that you asked about, it is our
23 preliminary understanding that those are costs
24 of investigating natural resources matters

1 relating in whole or part to remedy or RI/FS
2 matters or imminent and substantial endangerment
3 matters, although that is a preliminary
4 understanding not based on an investigation.

5 If you want us to verify that or to
6 obtain any additional information about those
7 costs for DOI on this, we will upon request
8 provide you with either a supplemental
9 interrogatory answer or DOI Rule 30 (b) (6)
10 witness, if appropriate, as to such costs.

11 MR. HILL: Okay. I would like to make that
12 request.

13 Are you done with your statement?

14 MR. TENENBAUM: Yes.

15 MR. HILL: Let's go off the record.

16 (Discussion had off the record.)

17 We will go back on the record.

18 Alan, what about 4308, a document with
19 Bates number 4308, that was Department of
20 Interior charges.

21 Is it your understanding that
22 Department of Interior does a natural resource
23 damages assessment not connected with natural
24 resource damages claims?

1 MR. TENENBAUM: My statement I just made
2 speaks for itself. If you want further
3 information about the document you just
4 referenced, we will provide you upon request a
5 supplemental interrogatory answer or a DOI Rule
6 30 (b) (6) witness as appropriate.

7 MR. HILL: I would like additional
8 information pertaining to your natural resource
9 damages costs. Okay.

10 MR. TENENBAUM: My previous statement
11 stands.

12 MR. HILL: Okay. As does mine.

13 MR. BOICE: What do you mean natural
14 resource damages costs?

15 The cost of investigating natural
16 resources damages?

17 MR. TENENBAUM: We will deal with Mike on
18 that. We will deal with Mike as I have
19 indicated in my previous statements to him, as
20 to what we may do in the future.

21 MR. HILL: Are you ready to swear the
22 witness, alan?

23 MR. GELMAN: Yes.

24 MR. HILL: Will you swear the witness,

1 please.

2 (Witness sworn.)

3 RICHARD EDWIN ROICE,

4 having been first duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. HILL:

8 Q. Would you state your name for the
9 record?

10 A. My name is Richard Edwin Roice.

11 Q. Mr. Roice, you are designated as a
12 witness to testify as to matters set forth in
13 Insilco's notice of deposition sent pursuant to
14 Rule 30 (b) (6) to testify as to matters
15 pertaining to costs which EPA has incurred to
16 date and which EPA may be seeking to incur in
17 the trial of this action.

18 My name is Michael Hill, I represent
19 Insilco. I am going to be asking you questions.

20 If at any time you don't understand or
21 hear one of my questions, just say so and I will
22 repeat the question. If you want to take a
23 break at any time, please just let me know and
24 we will do so.

1 MR. TENENBAUM: For the record, this is a
2 continuation of the Rule 30 (b) (6) deposition
3 that has been labeled the cost deposition and I
4 think the notice is marked as Exhibit 1; is that
5 correct?

6 MR. HILL: That's right.

7 MR. TENENBAUM: We incorporate at this time
8 our objections as we made at the prior session.

9 MR. HILL: Okay.

10 On agreement of counsel, I would
11 suggest that Exhibit No. 2 is presently, in
12 fact, six different documents. They are all
13 cumulative cost summaries for the Midco I and
14 Midco II sites.

15 I suggest that we label these six
16 documents for ease of reference later on 2A
17 through 2F, is that agreeable, if we refer to
18 them that way throughout the remainder of the
19 deposition.

20 MR. GELMAN: I think it may be easier for us
21 to understand what is going on, if you refer
22 each time to a designation, to just say the
23 Midco I covered, Midco I not covered, Midco I
24 cumulative, and the Midco II covered, Midco II

1 not covered, and Midco II cumulative. It may be
2 quicker. You don't have to read the whole title
3 to each document since they are all the same and
4 go through it that way.

5 If you want to do a designation, we
6 can. But, I think it may be quicker and keep us
7 all on track if we just describe the document a
8 little bit by what it is called.

9 MR. HILL: Why don't we do it both ways, if
10 there is no objection.

11 MR. GELMAN: Then why don't we label them.

12 MR. HILL: Okay, do that.

13 (Discussion had off the record.)

14 Let's go back on the record.

15 We were unfortunately unable to
16 overcome that technical hurdle.

17 Q. Mr. Boice, let's start out with the
18 first question that was put forth in Schedule A
19 to the notice of deposition.

20 You are the witness who has been
21 designated to testify as to the amount of costs
22 that plaintiff is seeking in this action.

23 What is the amount of costs that you
24 are seeking?

1 A. Okay.

2 The cost would include all past costs
3 which were -- in this case would be all costs
4 prior to, I think the cut-off date is March 31,
5 1990, that are not covered under the partial
6 consent decree; plus future costs which would be
7 costs related to the site, of course, subsequent
8 to March 31, 1990. Interest expenses, costs for
9 the Department of Justice, treble damages and
10 \$25,000 per day penalties.

11 MR. GELMAN: That's the costs being sought
12 against Insilco, is that what your question
13 referred to?

14 MR. TENENBAUM: Objection, ambiguous
15 question, more than one defendant.

16 BY MR. HILL:

17 Q. What costs is plaintiff seeking in this
18 action?

19 MR. TENENBAUM: From who?

20 A. From Insilco you mean?

21 BY MR. HILL:

22 Q. Well, it is not limited to any one
23 particular defendant. It is asking what are the
24 amounts that you are seeking in this action.

1 A. The amounts, okay. The total amount?

2 Q. That's right.

3 A. The total amount would be the total
4 past costs we have incurred, which includes all
5 costs through March 31, 1990. Minus the costs
6 that have been reimbursed by the defendants,
7 which is -- the participants I should say in the
8 partial consent decree, which is \$3.1 million
9 for past cost and \$100,000 for oversight
10 expenses.

11 Plus, as I stated before, interest,
12 future costs, DOJ costs and treble damages and
13 \$25,000 a day per day penalties for each party.
14 I am not sure whether that's for each party or
15 that is total.

16 Q. Okay.

17 Let's start with the amount of past
18 costs. What is the amount of past costs?

19 A. The total amount of past costs?

20 Q. That you are seeking in this action.

21 MR. GELMAN: Again objection, ambiguous.

22 A. The total amount we are seeking is the
23 total amount we have incurred that we have been
24 able to adequately document.

1 BY MR. HILL:

2 Q. I understand that.

3 What is it?

4 A. And, that is, you have these two
5 sheets, one for Midco I and one for Midco II.
6 They are labeled cumulative costs through March
7 31, 1990. So you can add the totals for each of
8 those to get the total past costs.

9 Q. What is the amount?

10 A. Well, we can do that right now if you
11 want to.

12 Do you have a piece of paper?

13 You could follow along if you are able
14 to add.

15 For Midco I, the cumulative costs. I
16 think we can have -- if there are addition
17 errors, we can correct that later, too. These
18 are cumulative costs through March 31, 1990.

19 Q. Mr. Boice, what are you going to do,
20 are you going to add the total that is
21 represented under the cumulative cost summary
22 for cumulative costs for Midco I and Midco II,
23 are you going to add \$2,027,408.85 and
24 \$4,132,554.81? Is that what you are about to

1 do?

2 A. Yes.

3 Q. Okay.

4 That is a total amount that you are
5 seeking in this action?

6 A. What?

7 Q. That's the total amount you are seeking
8 in this action?

9 A. No.

10 You asked for the total past costs.
11 Those are the total past costs. The amount we
12 are seeking, I already answered that question.

13 Q. You said from that amount you would
14 subtract \$3 million, correct?

15 A. No, that is not correct.

16 It is outlined in the partial consent
17 decree, if you read it. The partial consent
18 decree calls for \$3.1 million to be reimbursed
19 to USBPA for past costs and \$100,000 for
20 oversight costs.

21 Q. So if I wanted to find out what it is
22 you are seeking in this action, what documents
23 would I look to if I wanted to find out how you
24 came up with your numbers?

1 A. You asked two questions. How we find
2 out what we are seeking and how we would get the
3 numbers.

4 Which one do you want me to answer?

5 O. Let me rephrase it, Mr. Boice.

6 Let's start with Midco I.

7 \$2,027,408.85 is represented by that part of
8 Exhibit 2 which is the Midco I cumulative cost
9 summary; is that right?

10 A. Yes.

11 Q. All right.

12 Would we subtract the entire \$3.1
13 million, plus \$100,000 from that figure?

14 A. No.

15 The way you would do it, you would add
16 the total cost incurred for Midco I and for
17 Midco II, then subtract the amount reimbursed.

18 Q. Okay.

19 Then if we wanted to find out what
20 documentation substantiated the remaining costs
21 which you do seek to recover in this action, how
22 would I find that documentation?

23 MR. GELMAN: Objection. It is still
24 ambiguous as to what we are seeking in the

1 **action.**

2 **MR. HILL:** Why, counselor?

3 **MR. GELMAN:** Because we have quite a few
4 different defendants here and in different
5 classes.

6 **MR. HILL:** I just stated before that I am
7 talking about all defendants.

8 **MR. GELMAN:** But all the defendants aren't
9 in the same class. All defendants are in
10 different classes.

11 **MR. HILL:** Do you want to clarify or is the
12 witness going to clarify what that distinction
13 is?

14 **MR. GELMAN:** If you will just make your
15 questions a little bit more clear as to what you
16 want to talk about, I think we can go ahead and
17 do that.

18 **MR. HILL:** I am talking about all past costs
19 from all defendants. I think it's been pretty
20 clear.

21 **MR. GELMAN:** Go ahead.

22 **MR. HILL:** Can I clarify it further for you?

23 **MR. GELMAN:** If the witness can answer, he
24 can answer.

1 A. What was the question?

2 BY MR. HILL:

3 Q. Let's read the question back.

4 (The record was read.)

5 A. The total costs we are seeking in this
6 action, the total past cost, that includes the
7 costs that were already covered under the 1985
8 consent decree. So, you would look at all --
9 basically all the documents that we have
10 provided you in our cost documentation package.

11 Q. Okay. Now, let's talk about just
12 Insilco.

13 What costs are you seeking against
14 Insilco?

15 A. Against Insilco we are seeking, okay,
16 first of all we are not seeking costs that were
17 covered under the partial consent decree.

18 And we can read the partial consent
19 decree to determine what was covered under that
20 document.

21 But, we are seeking all costs that we
22 are able to document that were not covered under
23 the partial consent decree of 1985. All past
24 costs. Minus \$100,000 that has already been

1 reimbursed for oversight expenses.

2 Q. Yesterday Mr. Hackley indicated that
3 you were the person that told him what costs
4 should be included and what costs should not be
5 included as having been covered by that 1985
6 consent decree.

7 A. That's correct.

8 Q. Okay.

9 How did you determine which costs
10 should be included and which costs should not be
11 included?

12 A. Okay.

13 First of all I --

14 MR. GELMAN: Object to the extent it calls
15 for a legal conclusion.

16 MR. HILL: Fine.

17 MR. GELMAN: Go ahead, you can answer.

18 A. First I read the partial consent decree
19 and I think I would like to refer to that.

20 BY MR. HILL:

21 Q. Okay.

22 (Discussion had off the record.)

23 A. Okay.

24 What is covered and not covered is

1 defined in section 12 of the partial consent
2 decree.

3 Q. Okay.

4 A. And it includes generally:

5 "Except as provided
6 in paragraph E, 'covered
7 reimbursement matters' shall
8 include any and all
9 liability for reimbursement
10 of response costs incurred
11 by the United States up to
12 and including April 1,
13 1985 --"

14 Q. Okay.

15 A. Then:

16 "-- and upon their
17 payment for response costs,
18 identified in subparagraph 6
19 B."

20 Okay.

21 What is 6 B?

22 Q. It is on page 13.

23 A. Okay. That is \$100,000.

24 And under E, it says, these are the

1 exceptions to covered reimbursement, shall not
2 include:

3 "1. Any liability
4 which the participants or
5 any other person may possess
6 with respect to a release or
7 threatened release of waste
8 materials from the Midco I
9 or II sites which may occur
10 during the performance, or
11 after completion of the
12 RI/FSSs.

13 2. It shall not include
14 any and all liability which
15 the participants or any
16 other person may possess for
17 remediation of the soil,
18 surface water and
19 groundwater contamination at
20 or near the Midco I and II
21 sites, except for such
22 remediation as is performed
23 by the participants, or
24 performed by and reimbursed

1 to plaintiff by
2 participants, pursuant to the
3 terms of this partial
4 consent decree.

5 3. Any and all
6 liability which the
7 participants or any other
8 person may possess with
9 respect to recovery of
10 response costs incurred by
11 the United States after
12 April 1, 1985 and not
13 reimbursed to plaintiff."

14 Q. Okay.

15 A. And 4.

16 "Any and all
17 liability which participants
18 or any other person may
19 possess to the United States
20 for recovery of its response
21 costs associated with the
22 completion of the Midco II
23 partial cleanup which are
24 incurred after March 15,

1 1985.

2 5. Any and all
3 liability which participants
4 or any other person may
5 possess to the United States
6 for recovery of its response
7 costs associated with the
8 USEPA RI/FS preparatory site
9 for work incurred up to and
10 including April 1, 1985.

11 6. Any and all
12 liability which the
13 participants or any other
14 person may possess with
15 respect to any damages to
16 natural resources."

17 So, in trying to evaluate what costs
18 were covered and not covered, we realized that
19 there were some apparent ambiguities in the
20 consent decree, and the first one was whether or
21 not -- what was meant by when the cost was
22 incurred.

23 But, by review of documents that we
24 provided during negotiations and discussion with

1 people who participated in the negotiations in
2 1985, we determined that what was meant by that
3 was that the work had been --

4 Q. I am going to cut you off. Whatever
5 might have occurred during negotiations is not
6 relevant.

7 MR. GELMAN: I think the witness is going
8 forth and saying there was an ambiguity in a
9 part that he read.

10 He is allowed to explain it.

11 MR. HILL: That's right.

12 But, his determination of what this
13 document means is going to be determined by the
14 document itself and not by what he might
15 remember was stated five years ago during
16 negotiations.

17 Do you agree with that, counsel?

18 MR. TENENBAUM: We don't want to take any
19 position on that at this time. But, I don't
20 even know if you have a pending question at this
21 point anymore.

22 Why don't you redirect your question?

23 MR. HILL: That was my second objection.

24 Q. My only question, Mr. Boice, is if you

1 were presented with an invoice from Mr. Hackley
2 and he asked you should this be included as a
3 covered cost or a not covered cost, what
4 criteria did you use in your decision?

5 A. That is what I am getting to.

6 Q. Okay.

7 A. So when the cost was incurred wasn't
8 defined in the partial consent decree. But, we
9 felt that the intent of the parties was that it
10 meant the cost was incurred when the work was
11 done. That was the intent during the agreement.

12 So when we looked at the invoices, we
13 determined whether the work had been done or
14 tried to determine whether the work had been
15 done before April 1, 1985 or after.

16 Or, in the case of Midco II removal, it
17 would be before or after March 15, 1985.

18 Unfortunately, our accounting system
19 wasn't set up so that each -- for the continuing
20 contracts. There wasn't a star beside the work
21 for the cost incurred after those dates.

22 So we had to use our best judgment in
23 certain cases, and we got the best information
24 we could and we made the division in a way I

1 think was reasonable.

2 The other ambiguity is what is meant by
3 any and all liability for recovery of response
4 costs associated with USEPA RI/FS preparatory
5 site work incurred up to and including April 1,
6 1985.

7 From just reading that, it could be
8 interpreted to mean all the work EPA did in
9 preparing the work plan and also in closing out
10 that same contract, which would have included
11 work -- yes, included work before April 1, 1985
12 in the not covered costs.

13 But, from talking to -- looking at the
14 documents that we provided during the
15 negotiations, and talking to other people who
16 participated, we determined that what was the
17 intent of that is that the RI/FS preparatory
18 site work would only include reimbursement for
19 the cost for actually field work done on the
20 site prior to April 1, 1985.

21 So that was another exception to the --
22 before or after April 1, 1985. RI/FS
23 preparatory site work, field work that was done
24 on the site prior to April 1, 1985 was not

1 covered.

2 Q. Okay.

3 Mr. Boice, I would like you to take a
4 look at that part of Exhibit No. 2, Midco II not
5 covered costs for the ARCS contract. There are
6 two entries there for Pedco Environmental, Inc.

7 And those are costs which you are
8 seeking to recover against Insilco in this
9 action still; is that correct?

10 A. That's correct.

11 Q. Okay.

12 Now, what did Pedco do for you to
13 obtain those amounts?

14 A. Those costs were for the Midco II
15 removal action.

16 Q. Okay.

17 What did they do?

18 A. They -- okay.

19 There were two Midco II removal
20 actions. Well, other than the fence. The fence
21 was another action.

22 Q. There were three Midco II removal
23 actions?

24 A. Yes.

1 Q. Okay.

2 Q. What did Pedco do?

3 A. Okay.

4 There was a 1984 removal action, which
5 included removal of what was supposed to be all
6 drums containing chemicals on the site, or at
7 least liquid chemicals.

8 Q. Did Pedco do that?

9 A. Yes. It was under the ARCS contract.

10 Q. Okay.

11 You are not seeking to recovery that
12 against Insilco?

13 A. No, that was a covered cost. That was
14 completed in 1984.

15 Q. I am only asking what Pedco did for
16 which you are seeking reimbursement from Insilco
17 at this time.

18 A. Okay.

19 After that was completed, we initiated
20 another action, starting in 1985.

21 Q. When in 1985?

22 A. Actually work started in December 1984,
23 I think.

24 Q. Are you seeking those costs?

1 A. The costs that were incurred as
2 explained in the partial consent decree after
3 March 15, 1985 we are seeking.

4 Costs incurred prior to March 15, 1985
5 would be covered costs.

6 Q. Okay.

7 What did Pedco do?

8 A. Okay.

9 So, that action was to remove all the
10 rest of the surface containers from the site.
11 All the burned out drums and so forth from the
12 site, and to excavate the highly contaminated
13 subsurface soils at test pits, sludge pits, and
14 the filter bed, where materials or chemicals
15 were dumped right into the ground at the Midco
16 II site.

17 Those were excavated, piled on the
18 site, and then most of it was removed from the
19 site.

20 Q. Okay.

21 That was an emergency removal action?

22 A. It was a removal action. Yes. I guess
23 it is general.

24 MR. GELMAN: I object to whether it is

1 emergency or non-emergency, to the extent it
2 calls for a legal conclusion.

3 BY MR. HILL:

4 Q. Was it what you know as an emergency
5 removal action, Mr. Boice?

6 MR. GELMAN: I think we can designate a
7 witness to talk about the removal activities
8 with more specificity, since Mr. Boice's primary
9 job is with the remedial sites of the Superfund
10 sites.

11 MR. HILL: Do you have a person here who can
12 testify as to the removal actions that you are
13 going to seek to incur in this action?

14 MR. GELMAN: Not in the room today, but we
15 can produce a witness for that.

16 MR. HILL: Can you get that witness over
17 here today after Mr. Boice's testimony?

18 MR. TENENBAUM: Let's go off the record for
19 a second.

20 (Discussion had off the record.)

21 MR. HILL: Plaintiff's counsel while we were
22 off the record indicated that plaintiff has
23 brought additional documents today that have not
24 yet been produced to Insilco that pertain to

1 removal action costs and has suggested that I
2 review those costs or those documents at a later
3 time, and he will produce a witness in
4 Washington who can testify as to those removal
5 costs.

6 MR. TENENBAUM: In response to your notice
7 for Rule 30 (b) (6) deposition.

8 MR. HILL: In response to my interrogatories
9 I presume, also, which were issued on March 30,
10 1989 and here it is August 9 and still documents
11 are coming in.

12 MR. TENENBAUM: One thing at a time.

13 As I indicated yesterday, we are not
14 here to conduct a deposition to talk about your
15 interrogatory responses, that should be
16 something that you and I or you and Lee should
17 talk about. Again, we would like to do that.

18 To the extent your notice of Rule 30
19 (b) (6) deposition has some relationship to
20 that, there may be some overlap.

21 I would also, just as you brought up --
22 I would again note for the record that we have
23 again outstanding discovery requests from May of
24 1990 which we are awaiting further responses

1 from Insilco with respect to, and with respect
2 to some of that we are awaiting an indication as
3 to whether or not Insilco will be providing us
4 further responses or if we will have to file a
5 motion to compel.

6 MR. HILL: Insilco will be providing a
7 response.

8 Q. Mr. Boice, what is your understanding
9 of what Pedco did on the site to incur the costs
10 that are reflected in not covered costs for
11 Midco II?

12 A. I think I already answered that. Is
13 there something more, what do you need more
14 detail on?

15 Q. That's right, you answered generally
16 that they removed surface contamination and
17 contamination from sludge pits and the filter
18 bed.

19 How much contamination did they remove?

20 A. I don't know. I would have to look in
21 the documents.

22 Q. Okay.

23 So you brought the documents here
24 today. Could you pull those out?

1 A. I'm not sure whether I could or not.

2 Q. Would you try?

3 MR. TENENBAUM: These are, we are talking
4 about just the same subject that we indicated we
5 are going to be producing another witness on.

6 MR. HILL: I don't know.

7 Mr. Boice yesterday was indicated as a
8 person who would have knowledge as to these
9 costs.

10 MR. TENENBAUM: He has testified, he just
11 described them. If you want more detail.

12 MR. HILL: I want more detail.

13 MR. TENENBAUM: Then if he knows the answer,
14 he can indicate it. If he doesn't know the
15 answer, then we will produce another witness.

16 Is this one that we have to produce the
17 other witness for, Rich?

18 A. Probably.

19 MR. HILL: Well, if you brought the
20 documents here with you today, would you please
21 produce the documents?

22 MR. TENENBAUM: There may be some documents
23 in the cost documentation, I think there are
24 some relating to this. If you want to pull

1 those out.

2 The new documents I am talking about
3 are coming today, they are not here right now.

4 A. I doubt if the cost documents would
5 identify the quantity, the quantity of soils
6 removed.

7 MR. TENENBAUM: There is cost documentation
8 relating to Pedco, you can pull that. Whether
9 they have anything to do with quantities or not
10 is another question.

11 BY MR. HILL:

12 Q. The cost documents which you have
13 produced today don't reveal the quantity
14 removed?

15 A. I would have to check, but I wouldn't
16 think so.

17 Q. Okay.

18 Do they reveal what the contract terms
19 were?

20 A. Just to the -- you can look at the
21 document and see what they reveal. I am sure
22 they reveal cost categories that were included
23 in the contract.

24 Q. Mr. Boice, who organized the cost

1 documents to send them to me?

2 A. The financial management branch.

3 Q. Okay.

4 Who was responsible for answering our
5 interrogatories, the ones which you signed, Mr.
6 Boice?

7 MR. GELMAN: Again, I don't think we have
8 the interrogatories, if you have a specific
9 question with respect to that.

10 MR. HILL: Let me limit it to the
11 interrogatories that pertain to costs and which
12 are mentioned in the 30 (b) 6 notice of
13 deposition.

14 Q. Who answered those interrogatories, Mr.
15 Boice?

16 MR. TENENBAUM: I am sorry. What --

17 MR. HILL: Let me help you.

18 We will mark a copy of your signed
19 response to our interrogatories as Deposition
20 Exhibit No. 4.

21 (The document above-referred to
22 was marked Cost Deposition
23 Exhibit No. 4 for identification.)

24 A. I answered these with the advice of

1 counsel.

2 MR. GELMAN: Which number are we looking at?

3 BY MR. HILL:

4 Q. Who answered as to the facts?

5 MR. GELMAN: Can we get a little more
6 specific?

7 We have got rather lengthy
8 interrogatory questions here. Why don't we go
9 through them on whatever you would like to ask a
10 question?

11 MR. HILL: Fine.

12 Q. Perhaps it would be helpful if Mr.
13 Boice or somebody from plaintiff's side could
14 explain what the 7 or 8,000 pages of documents
15 that you produced to me were intended to respond
16 to, which category within interrogatory number
17 5?

18 MR. TENENBAUM: As we have indicated, if you
19 want to confer amongst lawyers as to our
20 interrogatory response, we will be glad to do
21 so.

22 We are not going to do it on the
23 record.

24 We will be providing a supplemental

1 response to interrogatory number 5.

2 MR. HILL: It is my position that you are
3 too late to do that.

4 MR. TENENBAUM: Really.

5 Well, it is nice to know. If you want
6 to tell us that we should not provide one, then
7 we will certainly take that into account.

8 But, we will be providing a
9 supplemental response with respect to the
10 information provided, some of the information
11 that is indicated in there.

12 I believe that you requested such a
13 supplemental response earlier in the deposition
14 today with respect to this.

15 Why is it too late for us to provide a
16 supplemental response and not too late for you
17 not to provide a supplemental response to our
18 interrogatories?

19 MR. HILL: You agreed to provide a
20 supplemental response on June 8, pursuant to
21 letters exchanged between the April 30 deficient
22 response you gave and June 8 agreement we had
23 when you would. You never did provide any
24 documents until July 13. It is now August 9.

1 MR. TENENBAUM: My recollection of the
2 events --

3 MR. HILL: Some of us were prejudiced by
4 this late production of information.

5 MR. TENENBAUM: We have been prejudiced by
6 Insilco not giving us a response, I can tell you
7 that.

8 I don't agree with your recitation of
9 the facts, and we are certainly entitled to
10 supplement our interrogatories.

11 This is the first time I ever heard
12 that a party is not entitled to supplement
13 interrogatories.

14 MR. HILL: I am not saying you are not
15 entitled to. I am saying you may not be able to
16 get those costs because you are so late.

17 MR. TENENBAUM: That is ridiculous.

18 You may have waived defenses on that
19 ground, because you are so late with respect to
20 yours, as well as other matters.

21 Again, I think the best way to deal
22 with these types of things is to confer with
23 counsel rather than make a side show in a
24 deposition.

1 MR. HILL: That's fine.

2 I am trying to find out what this
3 witness knows.

4 MR. TENENBAUM: Let's get on to that.

5 BY MR. HILL:

6 Q. Let's start with the last page of the
7 response by Mr. Boice. Is that your signature,
8 sir?

9 A. That's correct.

10 Q. Okay.

11 A. Do you still want me to tell you where,
12 what --

13 Q. The question that's pending, I
14 believe --

15 A. Which request is it responsive to?

16 Q. The question, I believe, that is
17 pending is what portion of those interrogatories
18 are the 7 or 8,000 pages which you sent to me
19 intended to respond to?

20 MR. GELMAN: Again I would object. It is a
21 legal --

22 MR. HILL: Your objection is noted, counsel.
23 Thank you.

24 MR. GELMAN: No.

1 My objection is that most of these are
2 legal matters that counsel have put down as to
3 what they reflect. There are some facts that
4 were responsive in the interrogatories and to
5 those Mr. Boice has signed his name to.

6 MR. HILL: I am trying to find out as to
7 these documents, how I can use them.

8 Now, he apparently was responsible for
9 responding to our written discovery. At least
10 he is the one who signed it. I want to find out
11 what he was thinking when he did it.

12 MR. TENENBAUM: He was not responsible for
13 legal objections made.

14 MR. HILL: That's right.

15 But, presumably some facts are
16 contained in your documents, not many, but some,
17 and I would like to know what they are
18 responding to.

19 MR. TENENBAUM: Your question was not about
20 those facts. If you would like to ask him about
21 those facts, you can.

22 BY MR. HILL:

23 Q. The documents that are contained in
24 your 7 or 8,000 pages that you sent to us, Mr.

1 Boice, what are they intended to respond to,
2 which questions?

3 MR. TENENBAUM: The facts that are in the
4 interrogatory answers is what he can testify to.
5 He can tell you the relationship, if any,
6 between that and the documents; if he knows, of
7 course.

8 BY MR. HILL:

9 Q. You can answer.

10 A. As counsel said, I signed my name to
11 the facts in there. The facts included in
12 response number 5 have to do with a memorandum
13 we sent to the negotiating parties who
14 represented Insilco, September 1, 1989 and
15 September 7, 1989.

16 Q. But then later on you supplemented this
17 response, didn't you, Mr. Boice, or didn't EPA?

18 A. Yes. That's what EPA did.

19 Q. Were you responsible for supplementing
20 this response?

21 A. I participated in it.

22 MR. TENENBAUM: We have not filed a written
23 supplementation that I am aware of.

24 Have we?

1 MR. HILL: What are the 7 or 8,000 pages you
2 gave to me, counsel?

3 MR. TENENBAUM: That is what I indicated.

4 The cost summaries that were provided
5 to you -- and it is rather evident as we have
6 gone through with Mr. Hackley yesterday at great
7 length -- that those provide supporting
8 documentation for the cost summaries.

9 I indicated earlier that a technical
10 supplementation will be provided to this answer
11 to reflect what is in the cost summaries or any
12 other matters that we -- or that counsel agree
13 with respect to supplementation.

14 BY MR. HILL:

15 Q. Mr. Boice, you can answer the question?

16 A. What is the question?

17 Q. Would you read it back, please?

18 (The question was read.)

19 There was a supplemental response, but
20 it didn't include these documents.

21 Q. Were you responsible for collecting
22 those documents in any way?

23 A. That was the financial management
24 branch was responsible for collecting the

1 documents and organizing them.

2 Q. Did they work with you in doing that?

3 A. Yes. I worked with them to some
4 degree.

5 Q. And what did you do?

6 A. After I got the cost summary from them
7 with the drafts, I compared it with the
8 September '89 cost summary and looked to see if
9 there were major differences in them.

10 And I discussed any differences I
11 observed with them and I -- there were a few
12 costs that they didn't have documentation for
13 that I was able to find. And let's see what
14 else.

15 Q. You told them which documents to
16 include within covered and uncovered costs,
17 right?

18 A. No.

19 These documents are for the total
20 costs. I worked with them on the cost summaries
21 to separate -- to provide a summary of our best
22 estimate of covered costs and not covered costs.

23 Q. Okay.

24 Now getting back to Pedco. Why was it

1 that the removal was not done until 1985,
2 Pedco's removal action for which you are seeking
3 costs in this action?

4 MR. GELMAN: Again I would object to that
5 because this witness isn't being designated for
6 that fact.

7 BY MR. HILL:

8 Q. You can answer the question.

9 MR. GELMAN: To the extent you can answer,
10 you can.

11 A. I could only speculate on that.

12 BY MR. HILL:

13 Q. Well, you have no knowledge whatsoever,
14 Mr. Boice, is that your testimony?

15 A. No knowledge, what do you mean?

16 Q. As to why --

17 MR. GELMAN: I believe he answered. He said
18 he could only speculate.

19 MR. TENENBAUM: This witness is not
20 designated to testify about that.

21 MR. HILL: To the extent he has knowledge,
22 he is required to give it.

23 MR. TENENBAUM: Excuse me.

24 This witness has not been designated to

1 testify as to detailed matters relating to
2 removal. Even if you have asked for such
3 designation in your notice, I am not sure that
4 you have.

5 MR. HILL: If I am going to respond to Mr.
6 Gelman's objection, the least you can do, if you
7 have two lawyers representing Mr. Roice here
8 today, is wait and go one at a time.

9 MR. TENENBAUM: I think we have tried to do
10 that. The breakdown in responsibility, of
11 course, we have such a complex notice that you
12 filed, which is so overbroad.

13 MR. HILL: He will let the court determine
14 how complex it is.

15 MR. TENENBAUM: I am here to primarily deal
16 with the designation issues. Mr. Gelman is here
17 to deal with the other kinds of issues.

18 And that question raises both or,
19 obviously, requires both of our participation.

20 We have been very accommodating to the
21 various defendants in asking multiple questions
22 at many of these depositions, including some of
23 the multiple lawyers representing the same
24 client. We hope that you would be likewise

1 accommodating.

2 MR. HILL: I think I have been.

3 Can you read the question back, please.

4 (The record was read.)

5 (A ten-minute recess was taken.)

6 Let's go back on the record.

7 We have once again had about a
8 ten-minute break of statements back and forth
9 between the attorneys as to why questions were
10 objectionable or not. I think we are just going
11 to remain in disagreement on some of these
12 points.

13 In the future, I would suggest that
14 both sides simply limit -- they can state an
15 objection, they can briefly state the grounds
16 for the objection. No coaching objections
17 whatsoever.

18 And if you instruct the witness not to
19 answer, I will move on to another question.

20 If you don't instruct the witness not
21 to answer, he is to answer to the best of his
22 knowledge.

23 MR. FINCH: If I may interject.

24 Since an instruction not to answer

1 would affect my cross examination rights, if I
2 am not satisfied with the basis for the
3 instruction, I am going to ask by way of voir
4 dire or otherwise for an adequate record to be
5 made with respect to the instructions.

6 MR. TENENBAUM: There may be need for
7 dialogue on some of these.

8 BY MR. HILL:

9 Q. You have no further information as to
10 what it was that Pedco did other than removing
11 some surface contamination and removing
12 contamination from sludge pits and the filter
13 bed; is that correct?

14 A. I already answered that question.

15 Q. Well, could you answer it again, is it
16 correct?

17 A. Well, your summary isn't exactly what I
18 said.

19 Q. Why don't you provide another summary?

20 A. Okay.

21 The removal that was initiated in 1985
22 at Midco II included removing all surface
23 containerized wastes, the burned out drums.

24 I think it also included some tanks,

1 removal of tanks, and it included excavation of
2 the sludge pit and filter bed, which were highly
3 contaminated from dumping hazardous wastes
4 directly into the ground and also putting,
5 storing them on-site, and then removing them
6 from the site to a proper disposal facility.

7 Q. Okay.

8 Now, when they removed the surface
9 containerized wastes, you are only talking about
10 removing waste which was contained in drums, is
11 that correct?

12 A. No, it could have been contained in
13 tanks.

14 Q. Okay.

15 Now, when you are talking about the
16 sludge pit and the filter bed, what sorts of
17 contamination were in those areas?

18 MR. GELMAN: Objection, as to relevance.

19 BY MR. HILL:

20 Q. Okay.

21 You can answer.

22 A. It included PCBs, cyanide, and I'm not
23 sure of the other ones.

24 Q. Do you have documents which would

1 indicate what the others were?

2 A. Yes.

3 Q. Do you have them here with you today?

4 A. Well, they might be in the
5 administrative record, at least some of them.
6 Then, they would also be in these other
7 documents we are producing, and there's some in
8 the 1984 OSC report.

9 Q. Okay.

10 A. Or the OSC report on the 1984 removal
11 action.

12 Q. But this was the 1985 removal action,
13 wasn't it?

14 A. That's correct. But, the 1984 removal
15 action might have included some documents on
16 that.

17 Q. All right.

18 Will you tell me where in the
19 administrative record I can find this answer?

20 A. Okay.

21 Well, I said the 1984 -- the on scene
22 coordinator's report for Midco II for the 1984
23 removal action.

24 Q. Okay.

1 A. That would include a lot of documents.
2 Then there were other documents. I would have
3 to look through the record and identify them.

4 Q. Okay.

5 A. I can do that if you want me to.

6 Q. I would like you to do that.

7 A. I think as I stated before there would
8 be additional documents in these additional
9 documents we are producing.

10 Q. The documents which you have not yet
11 produced, right?

12 A. Yes.

13 (A short recess was taken.)

14
15 Q. Back on the record.

16 Mr. Boice, were you able to find
17 documents or would you be able to refer to me to
18 documents that will be able to answer the last
19 question?

20 A. I would like to supplement my answer in
21 that I remembered while I -- while we were on
22 break that during 1984 and possibly prior to
23 that, EPA was in negotiations with the
24 defendants to implement the remedial, the RI/FS

1 and the Midco II removal.

2 And the defendants -- EPA didn't come
3 to an agreement with the defendants, because
4 they weren't willing to agree to implement the
5 action in accordance with EPA's requirements.

6 So from the beginning the defendants --
7 even though Mike Hill might not know about it,
8 the defendants were aware of what was going to
9 take place during the Midco II removal.

10 In fact, that information should be
11 available to you.

12 Q. Well, I am asking you in the course of
13 discovery right now, I don't think this is
14 responsive to my question.

15 The question is what substances were in
16 the sludge pit and the filter bed? If you would
17 only answer that question I would appreciate it,
18 Mr. Boice.

19 A. Okay.

20 But, if you go back to your documents,
21 you can probably find documents that were
22 produced during negotiations on this subject.

23 Q. So you can't refer me to any, is that
24 right? Thank you.

1 Mr. Boice, I show you --

2 A. I haven't finished the question.

3 MR. GELMAN: He is looking in the
4 administrative record.

5 MR. HILL: I am waiting for him to answer
6 the question.

7 Q. What are the substances? Is he able to
8 do it? We have just taken a 15-minute break. I
9 assume that is what he was looking for.

10 MR. GELMAN: We were looking for the
11 administrative record, now we have that.

12 BY MR. HILL:

13 Q. Does he have the answer to the question
14 now?

15 A. Besides that, there was also on-site
16 inspections conducted by the Midco trustees and
17 Geosciences during the Midco II removal.

18 This is responding to one of your
19 previous questions that I want to supplement.

20 So --

21 Q. Wait a minute. Hold it.

22 A. Each of the defendants had a lot of
23 information of what was going on during the
24 Midco II removal.

1 Now, if you want us to try to identify
2 specific documents that might provide
3 additional -- what you are asking about, the
4 sludge pit and filter bed.

5 MR. HILL: Wait a minute.

6 For the record, Lee, if he is going to
7 supplement his earlier responses, he can do it
8 on redirect or recross or cross by you. But,
9 when I am asking him a question, I want him to
10 only answer my question.

11 Is that agreed?

12 MR. GELMAN: Yes, that's fine.

13 MR. HILL: Okay.

14 MR. GELMAN: Now he is trying to identify
15 documents for you.

16 He is about to go through them. You
17 haven't given him a chance to do that.

18 MR. HILL: He has stated that he is
19 answering one of my earlier questions.

20 If he wants to do that, he can do it in
21 response to your questions inviting him to
22 supplement his answer.

23 MR. GELMAN: Very well.

24

1 BY MR. HILL:

2 Q. And did you discuss this supplemental
3 answer at all with counsel during the break?

4 A. No.

5 Q. Did you discuss your testimony at all
6 with counsel during the break?

7 A. No.

8 Q. It was just your idea to come back here
9 and supplement your answer as you have; is that
10 correct?

11 A. That's correct.

12 Q. Now, can you answer the question what
13 hazardous substances were in the filter bed and
14 the sludge pit and only that question?

15 A. I think the question was what documents
16 may have information on that.

17 Q. Well, the question is as I state it.
18 If you have to refer to documents, that is fine,
19 but please answer the question.

20 A. I disagree.

21 When we went on break, I was going to
22 identify documents that may have information on
23 the contents of the sludge pit and the filter
24 bed.

1 Q. Now, in order to answer the question
2 now, have you identified those documents?

3 A. I am looking through right now.

4 Q. Okay.

5 We have already wasted twenty minutes
6 on this question.

7 MR. GELMAN: Just a second. I am going to
8 object.

9 He has got a number of pages in front
10 of him. He is almost finished going through
11 this. Why don't you give him a chance to answer
12 the question?

13 MR. HILL: We have also wasted twenty
14 minutes on his trying to answer this question.
15 I would like to move forward.

16 MR. GELMAN: Give him a chance to go through
17 and identify the documents.

18 If you don't want him to identify them,
19 don't ask the question.

20 A. You can go through these documents
21 yourself and identify it.

22 BY MR. HILL:

23 Q. I would like an answer to my question,
24 but I don't want to spend all day getting it. I

1 have other questions that I want to get to.

2 If you can't do it quickly, just say so
3 and we will go on.

4 A. It will take a little while.

5 In fact, as I stated before, these are
6 documents that may have information on it. I
7 don't even know for sure that they will have
8 information.

9 Q. Okay.

10 I am not going to spend any more time
11 in this deposition. I will invite you, I will
12 ask you to supplement your interrogatory
13 responses with that information.

14 Mr. Boice, showing you document Bates
15 stamped number 1556, which we will add on
16 agreement of counsel to Deposition Exhibit No.
17 3.

18 I will ask you to identify that
19 document?

20 A. It is some type of a financial document
21 from PEI Associates.

22 Q. All right.

23 Now, if you looked at that document,
24 Mr. Boice, would you have told Mr. Hackley to

1 include it as a covered cost or not?

2 A. If you want to determine, see how we
3 separated covered and not covered, I can
4 start -- I can start from the beginning and
5 explain how that was done.

6 Q. Why don't you just answer my question.
7 Should that have been included as a covered cost
8 or not?

9 A. I can answer that if we go back to the
10 beginning and I can explain how, explain the
11 process we went through to determine covered and
12 not covered.

13 Q. Just answer yes or no: Would you have
14 told him to include that in a covered cost or
15 not?

16 A. I wouldn't have even looked at these
17 vouchers in particular.

18 What happened was when we went
19 through --

20 Q. Mr. Boice, I only want a yes or no
21 answer.

22 MR. GELMAN: He said he can't answer.

23 A. I can't answer that.

24 If you look at the summary, which was

1 provided to you, under this is for Midco II not
2 covered costs, and then there is also a summary
3 for Midco II covered costs.

4 BY MR. HILL:

5 Q. Yes.

6 A. In the documents for the emergency
7 removal contract, Pedco Environmental, Inc. I
8 remember that the financial system wasn't set up
9 to differentiate or put in a new cost category
10 when March 15, 1985 turned around.

11 So what happened was we found out the
12 criteria was when the work was done. So, we
13 determined that delivery order 6894-05-007 was
14 completed prior to March 15, 1985.

15 So all of that, and that is costs were
16 definitized, so all those costs should be
17 covered.

18 In addition to that, then we also got
19 information on another delivery order. Delivery
20 order 6894-05-030. And that included a
21 breakdown of the costs through March 15, 1985,
22 the cumulative cost through March 15, 1985 under
23 that delivery order.

24 And that's the closest thing we could

1 get to dividing the cost at March 15, 1985.

2 So we counted all costs under that
3 delivery order through March 15, 1985, and which
4 we also have provided a cost breakdown for those
5 costs as a covered cost.

6 To determine the costs that were not
7 covered, we took the total costs for the Pedco
8 contract and subtracted the costs that were not
9 covered.

10 Q. Okay.

11 A. And that is pretty clearly documented
12 in the summary.

13 Q. So should the costs which are reflected
14 in document Bates stamped number 1556 have been
15 included in your cumulative cost summary for not
16 covered costs for the Midco II site?

17 MR. GELMAN: I again object. That is the
18 same question.

19 A. It is a covered cost.

20 BY MR. HILL:

21 Q. So it should not have been included as
22 a not covered cost; is that correct?

23 A. Right.

24 In fact, this is a copy of the invoice

1 we sent to document how we were dividing covered
2 and not covered costs.

3 Q. Continuing to look at the Midco II not
4 covered cost document, what is it that Roy
5 Weston did for you which \$25,408.73 are charged?

6 A. Under the ARCS contract?

7 Q. Yes.

8 A. That was RI/FS oversight cost starting
9 around -- I believe this contract started around
10 December 1989. And it included providing
11 comments on the feasibility study, on the EPA's
12 proposed plan. I think they reviewed the public
13 comments and our response to the public
14 comments, and provided some negotiation support,
15 technical support during negotiations I should
16 say.

17 Q. How many hours did they spend doing
18 that?

19 A. How many hours?

20 Q. Right.

21 A. If we go back to the cost document, we
22 might be able to determine that. But, on the
23 other hand, it might be some of the information
24 that was redacted.

1 Q. Okay.

2 Your contract lab, Viar, for which
3 \$77,000 were charged against the Midco II site.
4 What did they do?

5 A. Okay.

6 That included conducting analyses for
7 the study done by the Fish & Wildlife Service.

8 Q. What was the cost?

9 A. Plus -- I didn't finish.

10 That included tissue analyses, flesh
11 analyses, plus soil and sediment sample
12 analyses.

13 And there were also some analyses for
14 the Midco II removal that probably were charged
15 to or conducted under the contract lab program.

16 Q. What was the cost per sample for those
17 analyses?

18 A. I remember from the previous day that
19 that that was some of the information that had
20 been redacted in order to protect the rights of
21 our contractors.

22 Q. So, you don't know?

23 MR. GELMAN: Again object.

24 He just said that is protected by a

1 confidential business information privilege.

2 MR. HILL: Are you instructing him not to
3 answer?

4 MR. GELMAN: On that, yes, I am.

5 MR. HILL: Okay.

6 MR. TENENBAUM: Again, we are waiting for a
7 response from Insilco and the other defendants
8 on that confidential business information issue.

9 MR. HILL: We agreed our objections, we were
10 going to be limited to stating the objection and
11 the ground. That's all. We were going to try
12 to limit the dialogue.

13 MR. TENENBAUM: I think we indicated that
14 there would be a need for some dialogue on some
15 matters.

16 BY MR. HILL:

17 Q. The next category in the Midco II cost
18 summary, Mr. Boice, is ESAT contract for Roy
19 Weston, \$968. What was that for?

20 A. I am not sure what that would be for.
21 I would have to check that.

22 Q. Skipping a category down to the IAG
23 contracts. That would be inter-agency
24 contracts; is that correct?

1 A. Yes. Inter-agency agreements.

2 Q. What was it the Department of Interior,
3 Fish & Wildlife did for you?

4 A. They prepared the report, they
5 conducted sampling of biota, wildlife and
6 aquatic life near the Midco I and II sites.

7 Q. Why did they do that?

8 A. It was part of the remedial
9 investigation feasibility study. And they
10 prepared a report on their results.

11 Q. Okay.

12 Department of Justice -- well, the IAG
13 contract for Department of Justice. What do
14 those costs reflect?

15 A. I'm not sure what those are for.

16 Q. How about the Elizabeth Israel Ad
17 Agency under other contracts, what does that
18 reflect?

19 A. That was for advertising the proposed
20 plan, the fact sheet for the EPA's selected
21 remedy.

22 Q. Okay.

23 What did they do, how did they do that
24 advertisement?

1 A. I'm not sure.

2 Q. Okay.

3 Is that something that you could have
4 simply put in the newspaper?

5 A. I'm not sure. But, I know they put it
6 in the local papers. I am not sure what else,
7 it was a full-page advertisement.

8 Q. How about Keros Cartwright?

9 A. Okay.

10 Keros Cartwright was -- helped in
11 oversight of the remedial investigation
12 feasibility study.

13 And this is a small quantity contract,
14 less than \$10,000. We requested procurement of
15 Dr. Cartwright, of Dr. Cartwright's services for
16 one year under that contract.

17 Q. You yourself were conducting oversight
18 as well, weren't you, Mr. Boice?

19 A. Yes.

20 Q. Okay.

21 Was there a determination made that
22 Keros Cartwright could perform that oversight
23 better or at less expense than you could have
24 yourself?

1 MR. GELMAN: Object as to relevance.

2 BY MR. HILL:

3 Q. You can answer.

4 A. I think I stated that he was to help in
5 the RI/FS oversight.

6 There is a congressional requirement
7 under CERCLA, in fact, that EPA not conduct the
8 oversight just by itself. We have to have a
9 support contractor to help us in the oversight
10 of the remedial investigation feasibility study.

11 And Dr. Cartwright was also -- we
12 thought we might use him as an expert witness in
13 the future, and, therefore, we wanted to keep
14 him up to date on what was occurring on the
15 site.

16 Q. Was there a determination made that
17 Keros Cartwright could have done the oversight
18 at less expense than you could have?

19 MR. GELMAN: Object as to form.

20 A. I think that is irrelevant.

21 We were required to have contractor
22 support for our oversight of the remedial
23 investigation feasibility study.

24 And Dr. Cartwright is certainly more

1 qualified in certain areas to provide or
2 oversight than I am. He is an expert in
3 hydrogeology.

4 Q. Was there a determination made that he
5 could do it at less expense than you?

6 MR. GELMAN: Again objection.

7 A. I think it is irrelevant. He is
8 doing --

9 BY MR. HILL:

10 Q. I know you think it is irrelevant. You
11 stated that.

12 If you would just answer yes or no?

13 A. He is doing something that I am not
14 capable of doing, basically, that's being an
15 expert consultant on hydrogeology.

16 Q. CH-2-M-Hill under the REM contract,
17 what did they do?

18 A. This was for under the REM contract.
19 CH-2-M-Hill was to conduct the remedial
20 investigation feasibility study at Midco I and
21 Midco II. And they prepared the work plan for
22 the remedial investigation feasibility study and
23 the RAMP might have been included under that,
24 too, I think it was, under that contract.

1 But, of course, they started to work on
2 it at Midco I. They even did field work, they
3 did the geophysical study.

4 At Midco II, which is what we are
5 looking at, they didn't do that. But, they
6 prepared the work plan and they started with
7 some of the procurement arrangements for the
8 groundwater monitoring system.

9 And these are the costs under that
10 contract that were incurred after April 1, 1985,
11 to the best of our determination.

12 Q. Okay.

13 How about Camp, Dresser & McKee?

14 A. The costs under the REM contract for
15 Camp, Dresser & McKee were to help EPA in
16 oversight of the remedial investigation
17 feasibility study at Midco I and at Midco II.

18 It started around December or the fall
19 of 1985, and it continued through until the ARCS
20 contract, it expired.

21 Then we procured Roy F. Weston under
22 the ARCS contract. CDM, or Camp, Dresser &
23 McKee, subcontracted the work to Roy F. Weston.
24 So it was Roy F. Weston who was actually

1 conducting the direct oversight assistance.

2 They also helped in preparing special
3 analytical services request for the US Fish &
4 Wildlife Service quality assurance project plan.

5 Q. How about CDM under the CES contract,
6 what did they do?

7 A. Okay.

8 This was for, we were also using Dr.
9 David Homer and PRC Environmental-- well, Dr.
10 David Homer, for support in overseeing the
11 remedial investigation feasibility study.

12 And he started under the previous
13 contract, one of the PRC contracts, and that
14 contract expired and we ran out of money for it.

15 So, then we procured him through a
16 different contract with CDM and he worked as a
17 subcontractor for CDM. And he provided comments
18 on the remedial investigation feasibility study
19 during that period of time related to the risk
20 assessment.

21 Q. Who was it from EPA that supervised the
22 1985 removal action for which you are seeking
23 costs against Insilco in this case?

24 A. Primarily William Simes.

1 Q. Who is that?

2 A. He is the on scene -- he was the on
3 scene coordinator for that project.

4 Q. Is he still with EPA now?

5 A. Yes.

6 Q. Region V?

7 A. Yes.

8 Q. Is he the person that made the
9 determination that a removal action should be
10 done?

11 A. He had a lot to do with it, but it has
12 to be approved by other people, too.

13 Q. Who approved it?

14 MR. GELMAN: I would object to that. That
15 is getting into the confidential matters of EPA,
16 primarily deliberative-process type matters.

17 MR. HILL: Are you instructing him not to
18 answer?

19 MR. TENENBAUM: As this has come up in the
20 earlier depositions, and as we have indicated in
21 the earlier depositions, the witness will be
22 allowed to answer as to who -- if he knows,
23 subject to our objections, you are asking for a
24 legal conclusion as to who had the ultimate

1 authority for the Agency to make such decisions.

2 As to the deliberative-process involved
3 prior to that person who had the ultimate
4 authority making his decision, that is not
5 something that he is allowed, permitted to
6 answer. And I would have to instruct him not to
7 answer that.

8 However, you would be allowed to ask
9 questions about costs that may be sought to be
10 recovered with respect to persons who worked on
11 this matter, if the question is properly
12 phrased, again, as to that, rather than to get
13 at the deliberative-process of the Agency.

14 MR. HILL: What I am trying to do is
15 determine whether or not these costs were
16 reasonable and whether or not they were
17 necessary. And Mr. Boice, it sounds like,
18 doesn't have personal information as to that.

19 He stated earlier that he is not the
20 right witness. I am trying to find out who the
21 right witness is.

22 MR. TENENBAUM: We will produce the United
23 States if you want a deposition.

24 MR. HILL: I would like to find out as much

1 as Mr. Boice does know about this process if I
2 can.

3 MR. TENENBAUM: As I understand it, you are
4 only entitled to ask questions at this
5 deposition as to the costs that we are seeking
6 to recover.

7 So, if you want to know who the people
8 were involved and what they did, generally
9 speaking, that would be fine. But, as to the
10 deliberative process, I think you have to
11 respect the Agency's confidential
12 deliberative-process.

13 BY MR. HILL:

14 Q. The question is who approved this
15 removal?

16 A. I believe authorization was ultimately
17 approved by Valdus Adamkus. Except that --

18 Q. Who is the regional administrator?

19 A. The regional administrator of USEPA.

20 But, once it goes beyond, I think at
21 that time it was six months and \$1,000, it has
22 to be approved by headquarters. So when it went
23 past that limit.

24 Q. \$1 million?

1 A. I think it was 1 million. I'm not
2 sure.

3 Q. Okay.

4 A. I think then it had to be approved by
5 someone in headquarters. I think it was Lee
6 Thomas, I'm not sure.

7 Q. What did Mr. Adamkus make his decision
8 based on?

9 MR. GELMAN: Again same objection.

10 MR. HILL: Are you instructing him not to
11 answer?

12 MR. GELMAN: Yes.

13 BY MR. HILL:

14 Q. Okay.

15 Were action memoranda created to
16 request authorization to perform that removal
17 action?

18 A. Yes.

19 Q. And those action memoranda would have
20 explained the reason or the need for the removal
21 action; is that right?

22 MR. GELMAN: Object.

23 MR. HILL: Are you instructing him not to
24 answer?

1 MR. GELMAN: Object to a legal conclusion
2 that it calls for. In addition, the same
3 objection as to deliberative-process, but I am
4 not instructing him not to answer that question
5 to the extent he can.

6 MR. HILL: Okay.

7 A. I believe action memos for removal
8 action is supposed to address the reason why it
9 is being requested in a general way.

10 BY MR. HILL:

11 Q. Okay.

12 A. Also those documents will be -- should
13 be provided to you.

14 Q. Those are the documents you haven't yet
15 provided and you are going to provide later on
16 today?

17 A. Yes.

18 MR. TENENBAUM: To the extent they have not
19 previously been produced, I am not sure which
20 ones you are talking about here, we may have
21 already produced them. Some may be in the
22 record.

23 We are going to produce any additional
24 ones that may not have already been produced.

1 MR. HILL: Okay.

2 Q. Turning back to Deposition Exhibit No.
3 2, look at the payroll costs for Midco II, not
4 covered costs.

5 Say, for instance, Domingo Abella in
6 the Region V personnel costs, just to choose an
7 entry. Fiscal year '88, pay period 18, 2 hours
8 charged against the site.

9 Can you tell us what Mr. Abella did on
10 that day?

11 A. Okay.

12 Well, I could -- I guess I could deduce
13 this. That was a time when, let's see, 1988.
14 That might have been during -- that was during
15 the feasibility study.

16 So it was probably related to review of
17 the feasibility study and identifying ARARS or
18 applicable relevant and appropriate standards
19 for the feasibility study.

20 Q. Are you sure?

21 A. No, I'm not sure.

22 But, based on my knowledge of the site
23 and what was going on at that time, and I do
24 know that Dom Abella did review the feasibility

1 study.

2 Q. That is speculation, right?

3 A. As to what he did on that particular
4 day you mean?

5 Q. Yes.

6 A. Yes.

7 I don't know for sure what he was doing
8 on that particular day. I have no direct
9 knowledge of that.

10 Q. Okay.

11 Turn the page to Mr. Berman, to choose
12 a name, 1985, choose the 22nd pay period. On
13 this day there are 14 hours charged. Do you
14 know what that is for?

15 MR. GELMAN: I am going to object to the
16 extent that is calling for attorney-client
17 privilege.

18 MR. HILL: Are you instructing him not to
19 answer?

20 MR. GELMAN: If the witness can tell you
21 what each employee did on these lists on any
22 certain date -- I don't think he can. If he
23 knows, I guess he can answer.

24 MR. HILL: Okay. Without objection, I will

1 withdraw the question.

2 MR. TENENBAUM: If the witness is able to
3 testify, perhaps he knows in very general terms
4 about what an attorney did.

5 But, I am sure you wouldn't want a
6 witness to reveal attorney work product or
7 attorney-client communications.

8 MR. HILL: But I would want to know what it
9 is you are seeking reimbursement for.

10 MR. TENENBAUM: You know Mr. Berman is an
11 attorney. I don't know what more you want to
12 know.

13 If you want to be more specific in your
14 question, we can determine that you are not
15 asking for attorney work product or
16 attorney-client communications, then the witness
17 might know the answer.

18 BY MR. HILL:

19 Q. Let's see what he does know.

20 What do you know about what Mr. Berman
21 was doing on the 22nd pay period in 1985?

22 MR. TENENBAUM: I would note for the record
23 that this whole line of questioning is not
24 reasonable.

1 MR. HILL: If you object, that is fine. It
2 is noted.

3 MR. TENENBAUM: Will you be able to state
4 what you were doing on a given date in '85?

5 MR. HILL: Yes. I would look at my
6 timesheet.

7 MR. TENENBAUM: Oh. If you want him to pull
8 timesheets --

9 MR. HILL: If he can pull a timesheet that
10 can tell him, that will be fine, yes.

11 A. Yes.

12 You could look at the timesheet and see
13 which projects he was working on. What exactly
14 he was doing on those projects is not recorded
15 on the timesheet.

16 Q. Would it tell us anything more than he
17 was working on Midco II?

18 A. No.

19 Q. Then why would it give you additional
20 information?

21 A. It would tell you all the other
22 projects he is working on. But, generally I
23 know there was some -- there was a -- the
24 partial consent degree was completed somewhat

1 before that time. This might have been some
2 more work related to that or related to
3 subsequent amendments to the partial consent
4 degree. But, I'm really not sure what he was
5 working on.

6 Q. You didn't know?

7 A. That's right.

8 Q. Cynthia Fuller, 1988, 19th pay period.
9 Who is Ms. Fuller and what was she
10 doing?

11 A. Okay.

12 She works for the Great Lakes National
13 Program Office. And she was probably reviewing
14 the feasibility study for any concerns
15 applicable to the Great Lakes programs and to
16 identify any ARARS relevant to her program for
17 the feasibility study.

18 Q. What is her job? What is her title?

19 A. She is with the Great Lakes National
20 Program Office and she is a technical person.
21 I'm not sure exactly what her title is.

22 Q. Okay.

23 You are not sure of what she was doing
24 that day?

1 A. I wasn't exactly overseeing her that
2 day. No.

3 MR. TENENBAUM: I assume it is not Insilco's
4 position that the United States is supposed to
5 produce each one of these employees at a
6 deposition to testify as to what they were
7 doing?

8 MR. HILL: Our position is that you have to
9 show what work was performed for the costs that
10 you are seeking in this case.

11 MR. TENENBAUM: I think the Agency has
12 fulfilled all of its responsibilities and that
13 is why I was asking what Insilco's position was.

14 MR. HILL: Okay.

15 Mr. Boice, I have no further questions.

16 Thanks very much.

17 (Discussion had off the record.)
18
19
20
21
22
23
24

CROSS EXAMINATION

BY MR. HILLEMANN:

Q. Mr. Boice, my name is Carl Hillemann and I represent Desoto, Inc.

I am going to ask you a few questions. If you don't understand me, please stop me or ask me to repeat my question.

Who are your supervisors within EPA?

A. Presently?

Q. Yes.

A. My immediate supervisor is Melinda Gould. G-o-u-l-d. My second-line supervisor is James Mayka. M-a-y-k-a.

Q. Any other supervisors?

A. The next level above James Mayka is presently John Kelly is acting. The next level above him, Norm Niedergang is acting.

Q. Then above Niedergang would be?

A. Above Niedergang would be I think Dave Ullrich is still acting there. U-l-l-r, I think it is, i-c-h, acting waste management division director.

Q. Where there is time for these individuals, where would that time be charged in

1 the cost documents?

2 A. It is possible if they are working
3 directly on a site that they would charge
4 directly to the site, I believe.

5 But, to find out for sure, I would have
6 to -- you should talk to the indirect cost
7 expert and see, or I could look on these
8 documents and see if their time is there. I
9 think it is.

10 I think it is possible for them to --

11 Q. The record will reflect that you are
12 looking at which exhibit number right now?

13 A. 2.

14 MR. GELMAN: The Midco I not covered costs
15 summary.

16 A. Yes.

17 Melinda Gould's name is here, so it is
18 possible that if they are working on a specific
19 project, that they can charge it directly to
20 that project.

21 Otherwise, my understanding is that
22 their costs would go to a general account
23 number, which contributes to the indirect costs.

24 Q. Did Melinda Gould charge time directly

1 to the Midco I or the Midco II sites?

2 A. I see Midco I, yes.

3 Q. Where is that reflected?

4 A. Yes. She charged some time to both
5 sites, to each site.

6 Q. Where would that time charge be
7 reflected?

8 A. It is summarized in these cumulative
9 cost summaries that were provided to the
10 defendants.

11 MR. HILL: Within Exhibit 2?

12 A. Within Exhibit 2, right.

13 MR. HILLEMANN: Okay.

14 A. Then there is the -- backup timesheets
15 are in the cost documentation package.

16 Q. Are you seeking recovery from the
17 defendants in this action for that time charged
18 for Ms. Gould?

19 A. Yes.

20 Q. What about James Mayka, is his time
21 reflected in Exhibit 2 as being charged?

22 A. No.

23 Q. Does that mean that the government is
24 not seeking any cost reimbursement for any time

1 for James Mayka?

2 A. No direct hours, but he would still
3 contribute to the indirect costs.

4 Q. And is indirect costs a factor for Mr.
5 Mayka included in these exhibits?

6 MR. TENENBAUM: The witness hasn't been
7 designated to testify as to the exact
8 calculation of the indirect cost factors and so
9 on. Mr. Cook will testify as to that.

10 I don't want you to speculate. I will
11 let you answer if you think you know.

12 A. The indirect cost factors are in this
13 document. The indirect cost rates are in this
14 document.

15 BY MR. HILLEMANN:

16 Q. What about Mr. Constantelos?

17 MR. TENENBAUM: Let me correct my statement.
18 I think Mr. Cook will provide some information
19 on that. Mr. Hackley provided other information
20 on that yesterday as well.

21 BY MR. HILLEMANN:

22 Q. Is the government seeking any
23 reimbursement for direct time for Mr.
24 Constantelos?

1 A. These are for not covered costs, right?

2 MR. HILLEMANN: Yes.

3 MR. TENENBAUM: When you say is the
4 government seeking, you mean against your
5 client, against Desoto?

6 MR. HILLEMANN: Yes.

7 A. No, we are not. According to the
8 cumulative summary, we aren't.

9 Q. You aren't seeking time for Mr.
10 Constantelos?

11 A. No direct costs, right.

12 Q. What about for Mr. Neidergang, are you
13 seek any direct costs for him?

14 A. Yes.

15 During the 14th pay period of fiscal
16 year '85, we are seeking direct costs for one
17 hour on Midco I and one hour on Midco II.

18 Q. Other than those two hours, are you
19 seeking any other time for Mr. Niedergang?

20 A. No direct cost, no.

21 Q. Is it your position that Mr. Neidergang
22 did not perform any services or do any work in
23 connection with the Midco I or Midco II sites
24 other than those two hours of time?

1 A. I think our position is that this is
2 the only time that we have documentation for him
3 spending time directly working on these two
4 sites.

5 Q. What about Mr. Adamkus, are you seeking
6 any direct costs reimbursement for his time in
7 connection with the Midco I or Midco II sites?

8 A. No.

9 Q. Is it your position then that he really
10 didn't perform any services in connection with
11 either of these sites?

12 MR. TENENBAUM: Directly.

13 MR. HILLEMANN: Direct services.

14 A. No. That is, we don't have any
15 documentation that he provided direct services.
16 His work would have been included in the
17 indirect costs.

18 Q. With respect to all of these
19 individuals we have just discussed, Gerald
20 Mayka, Constantelos, Neidergang and Adamkus, and
21 if you prefer we can take them one at a time;
22 but, did you go to these individuals for advice
23 on issues dealing with Midco I or the Midco II
24 sites?

1 And like I say, we can take them one at
2 a time, if you prefer.

3 A. Okay. Let's go one at a time.

4 Q. Mr. Gerald. Did you go to him for any
5 advice on technology issues or any other issues?

6 A. Gerald? You mean Gould?

7 Q. Gould, pardon me.

8 A. Yes. She did charge some time to the
9 project.

10 Q. I am sorry.

11 How much time was that, do you have
12 that handy?

13 A. Total of 13.5 hours on Midco I and 9.5
14 hours on Midco II.

15 Q. What kind of advice were you seeking
16 from her in connection with your dealings with
17 her regarding those hours?

18 MR. GELMAN: I would object.

19 To the extent it calls for the
20 deliberative-process privilege information, it
21 is a privileged matter. To the extent he can
22 answer it generally, then I will allow him to
23 answer.

24 A. You mean on these, the particular hours

1 that she charged here that she put down on her
2 timesheet?

3 BY MR. HILLEMANN:

4 Q. Do you recall if those hours involved
5 discussions with you wherein you were seeking
6 her advice?

7 A. I don't remember.

8 Q. Do you recall ever asking Ms. Gould for
9 any advice in connection with these sites?

10 A. Yes. We discussed the sites
11 periodically, yes.

12 Q. Would that in any event be no more than
13 13 hours of discussions with her, as reflected
14 in those timesheets?

15 A. As I stated before, probably some of
16 the discussions weren't charged directly to the
17 site. It would have been probably more than
18 that.

19 Q. If you were to estimate how many hours
20 you spent in discussions with her concerning the
21 site, what would your estimate be?

22 A. I really couldn't estimate. But, this
23 time isn't simply for discussions with me. She
24 probably did some other work related to the

1 **site.**

2 Q. Did Ms. Gould --

3 A. For example, reviewing the ROD,
4 reviewing the unilateral administrative order,
5 reviewing documents that go out.

6 Q. Did Ms. Gould ever give you any advice
7 regarding technological issues in connection
8 with the sites?

9 A. We discussed technological issues.
10 Yes.

11 Q. How often would you say, how much time
12 would you say was spent in those discussions?

13 A. I have no idea.

14 Q. What about for Mr. Mayka, did you ever
15 go to him for any advice in connection with the
16 sites?

17 A. Yes.

18 Q. How often would you say, how much time
19 total?

20 A. I really couldn't estimate.

21 Q. Less than five hours, less than ten
22 hours?

23 A. It is not like we sit down and we talk
24 about the sites all at once. It is on and off,

1 whenever necessary.

2 For example, he is a land ban
3 specialist, so I have to talk to him about the
4 applications of the land ban issues. And so he
5 is one of the supervisors, so I update him on
6 the progress of the site and the progress of the
7 case.

8 Q. Did he give you any kind of guidance
9 with respect to how you should proceed with
10 respect to the sites?

11 A. Regarding land ban issues, yes.

12 Q. What did he advise?

13 MR. GELMAN: Same objection as before,
14 deliberative-process. As to general issues, he
15 can answer.

16 I think that may be too specific a
17 question.

18 MR. HILLEMANN: What is your standard for
19 deliberative-process, when you tell him to
20 answer or not answer?

21 MR. TENENBAUM: Let me restate that
22 objection to include the pending motion for
23 protective order that we have which covers a
24 broader issue of discovery into record issues.

1 This question is getting into discovery
2 into a record issue, which may include elements
3 of deliberative-process. I am not sure,
4 offhand.

5 If the questioner is able to proffer a
6 basis as to how this is relevant to a non-record
7 issue, then the witness can perhaps answer.

8 But, as to costs, it seems that a
9 general description would suffice to justify the
10 cost. The exact advice that he gave would
11 not -- given that it is subject to overlap with
12 a record issue, and a deliberative-process
13 issue, the exact advice he gave would not be an
14 acceptable question.

15 MR. HILLEMANN: You are instructing him not
16 to answer, right?

17 MR. TENENBAUM: Unless you are able to
18 proffer as to how it would be relevant to a
19 non-record issue.

20 MR. HILLEMANN: We will move on.

21 Q. Did Mr. Constantelos give you any
22 advice on any issues in connection with the
23 sites?

24 A. Since 1985 you mean?

1 Q. Yes.

2 A. I don't remember him giving me any
3 direct advice.

4 Q. What about Mr. Niedergang, did you go
5 to him for any kind of advice or did he give you
6 any kind of advice in connection with the sites?

7 A. Are you talking about advice --

8 Q. I am sorry.

9 A. Are you talking about advice or a
10 meeting where we discussed different issues and
11 tried to come to some type of agreement on how
12 we will proceed and that type of thing.

13 Q. Either.

14 A. So by advice you mean either one.
15 Okay. Yes, we participated in a meeting with
16 Norm.

17 Q. How much time would you say you spent
18 in meetings with Mr. Niedergang with respect to
19 the sites?

20 A. Me personally you mean?

21 Q. Yes.

22 A. There might have been some meetings
23 that I wasn't in, I didn't participate on.

24 But, you mean the total for the whole

1 time period?

2 Q. From 1985 to the present.

3 A. The ones I can remember, maybe two
4 hours in a meeting.

5 Q. Over that five-year period?

6 A. The ones I can remember.

7 MR. TENENBAUM: Per meeting or total?

8 A. Total.

9 BY MR. HILLEMANN:

10 Q. What about Mr. Adamkus, did you go to
11 him for any advice in connection with the Midco
12 sites?

13 A. We have to brief Mr. Adamkus on the
14 remedy selection for the site. And then he can
15 give us any advice he wants to, or he can
16 disapprove or approve the rest of this.

17 Q. Did he give you any advice during that
18 briefing?

19 A. Did he give me any advice. He asked
20 questions, but I don't remember him giving
21 advice.

22 Q. Who is the Agency's expert on alternate
23 technologies with respect to the Midco I and
24 Midco II sites?

1 MR. GELMAN: I would object to this as
2 beyond the scope of this deposition unless you
3 can explain a way that --

4 MR. HILLEMANN: I am talking about their
5 time. How much time they have spend.

6 MR. GELMAN: You have asked who the expert
7 is.

8 MR. HILLEMANN: Right.

9 MR. TENENBAUM: You don't mean the expert
10 witness, do you?

11 MR. HILLEMANN: I mean expert consultant.

12 A. The Agency has a lot of experts in the
13 office of research and development that are
14 accessible to EPA. We can call and discuss
15 issues with them.

16 In addition to that, we have support
17 from Roy F. Weston, which that contractor has a
18 lot of experience in alternate technologies.

19 Q. Okay.

20 How much time for consultant-type
21 individuals are you seeking as to costs?

22 A. For Roy F. Weston you mean?

23 Q. Yes.

24 A. If you look at the summary for not

1 covered costs in Exhibit 2, these are RI/FS
2 oversight costs.

3 Under the ARCS contract for Midco I we
4 have \$26,570.53. And under the ARCS contract
5 for Midco II, we have \$25,408.73.

6 Also under the REM contract, we have
7 the work by Camp, Dresser & McKee which was for
8 RI/FS oversight.

9 Of course, all of it wasn't for the
10 feasibility study review. It was also for the
11 remedial investigation oversight.

12 And the costs for that for Midco I are
13 \$113,324.29, and for Midco II, \$113,487.90.

14 And Roy F. Weston was a subcontractor
15 to Camp, Dresser & McKee, so even though it
16 doesn't say Roy F. Weston on the cumulative
17 summary, the contract -- they were the
18 contractor doing the oversight, the direct
19 oversight work.

20 Q. Did you use any other consultants in
21 connection with alternate technologies?

22 A. No.

23 MR. GELMAN: I object to the extent that
24 that does get back to record-review issues.

1 BY MR. HILLEMANN:

2 Q. What was the role of Planning Research
3 Corporation in connection with the Midco sites?

4 A. Okay.

5 From the beginning, we had Dr. David
6 Homer, a contract with Dr. David Homer to
7 provide review of the risk assessment with the
8 thinking that he would provide some type of
9 expert witness support to EPA.

10 And we kept PRC on and David Homer
11 throughout most of the RI/FS to provide input
12 into the RI/FS relative to the risk assessment.

13 Q. Did he perform any other role in
14 connection with the sites other than what you
15 have described?

16 A. All of their work was relative to the
17 risk assessment.

18 Q. I am sorry.

19 A. All of their work was relative to the
20 risk assessment.

21 Q. How did Planning Research Corporation
22 advise you in connection with the services they
23 performed, what kind of advice did they give?

24 MR. GELMAN: Again we get into the same

1 objections.

2 A. What was the question?

3 BY MR. HILLEMANN:

4 Q. I wanted to know what kind of advice
5 Planning Research Corporation gave you in
6 connection with the services that they
7 performed?

8 A. You mean the form of their advice?

9 Q. What did they tell you?

10 A. You mean exactly what they said to us?

11 Q. Right. What their recommendations
12 were.

13 A. Relative to the RI/FS, that would be
14 the comments on the RI/FS. Those are in the
15 administrative record.

16 Q. Who made the decision regarding whether
17 to accept those comments?

18 MR. TENENBAUM: Hold it. Is that relevant
19 to a non-record issue?

20 MR. HILLEMANN: If you are going to be
21 seeking cost of that person, yes.

22 MR. TENENBAUM: You can circularly make any
23 issue into a cost issue that way. That is
24 certainly not the intent of CERCLA.

1 Is this relevant to a non-record issue?

2 MR. HILLEMANN: It is relevant to costs.

3 Are you instructing him not to answer?

4 MR. TENENBAUM: I think you would have to
5 rephrase the question, if you wanted to make it
6 relevant to cost.

7 Your question is asking for a
8 record-review issue. If you want to ask who was
9 working with PRC and who worked on reviewing
10 their comments, something like that, that would
11 be an acceptable question.

12 MR. FINCH: It would also be acceptable to
13 ask the nature of the work for which costs are
14 being sought.

15 MR. TENENBAUM: He already answered that.
16 That is not what he asked.

17 He asked a very specific question about
18 the Agency's deliberative process and the remedy
19 as well, and some part of the Agency's
20 deliberative-process.

21 MR. FINCH: I had understood this question
22 to be, in essence, a follow up, attempting to
23 determine or going to the issue of whether the
24 costs were properly recoverable.

1 MR. TENENBAUM: I think he can phrase -- I
2 think the question could be phrased to get
3 solely at costs.

4 MR. FINCH: That deprives us of the
5 opportunity to determine whether the costs
6 were -- it is only if the defendants are forced
7 to accept the government's view of what is or
8 isn't recoverable that your objections make
9 sense.

10 MR. TENENBAUM: I didn't follow that.

11 MR. FINCH: You are making the point, Alan,
12 I think, that because the government is seeking
13 costs for virtually all of the work that the
14 government undertook in connection with these
15 sites, that an inquiry into costs can get into
16 record-review issues circularly. And you don't
17 want us to get into record-review issues.

18 The problem is that the reason you
19 don't want us to get into record-review issues
20 is that you are asserting a privilege. But, the
21 privilege is only good for so much, and in
22 certain context and in certain ways.

23 And the privilege is no good if the
24 government is simultaneously seeking to recover

1 costs in areas that are related to the
2 compilation of the record or related to the
3 deliberations within various governmental
4 agencies.

5 To the extent that there may be an
6 issue of whether the costs are properly
7 recoverable under CERCLA, we are entitled to any
8 information that is probative of whether the
9 costs are properly recoverable.

10 MR. TENENBAUM: In other words, it would be
11 your position that as soon as the Agency seeks
12 to recover any costs, then any limitation on
13 discovery into record-review issues under CERCLA
14 is waived by the Agency?

15 MR. FINCH: No, that wouldn't be my
16 position.

17 But, what my position would be is if
18 there is a genuine issue as to the
19 recoverability of certain costs, we are entitled
20 to information that is probative of that.

21 If there is no genuine issue, then I
22 suppose it wouldn't have any impact on the
23 application of the privilege that you have
24 asserted thus far. But, if there is a genuine

1 issue, then I don't think your privilege is
2 worth anything in this context.

3 MR. TENENBAUM: What is the genuine issue
4 that we are talking about here as to these
5 particular costs on this particular record
6 issue?

7 MR. FINCH: Perhaps I really don't know that
8 at this point. But, I think we are entitled to
9 a certain amount of discovery to flesh out the
10 record as to whether such an issue exists.

11 MR. TENENBAUM: Under your theory, if you
12 say now that seeking costs does not waive all
13 limitations on discovery relating to record
14 issues; your position is that if it is a genuine
15 issue, there may be a different outcome. So --

16 MR. FINCH: We are entitled to a certain
17 amount of discovery to see whether such an issue
18 exists. That is all I am saying.

19 MR. TENENBAUM: Wouldn't that wipe out any
20 limitations?

21 MR. FINCH: Not if it is handled properly.

22 MR. TENENBAUM: So far you are not saying
23 what the genuine issue is about?

24 MR. FINCH: When I get into my questioning,

1 we will see. I haven't gotten there yet.

2 MR. TENENBAUM: With respect to the pending
3 question, I will have to instruct him not to
4 answer as currently phrased.

5 But, we will be glad to have him answer
6 if it is phrased as to what costs we are seeking
7 to recover with respect to reviewing comments of
8 PRC.

9 BY MR. HILLEMANN:

10 Q. Mr. Boice, did you make a decision to
11 accept the comments from Planning Research
12 Corporation?

13 MR. TENENBAUM: Same objection and
14 instruction.

15 A. Instruction not to answer?

16 MR. TENENBAUM: Yes.

17 MR. HILLEMANN: You are basically forcing us
18 to give you our legal theories in order to get
19 discovery, is that what you are saying?

20 MR. TENENBAUM: I am saying you can rephrase
21 your question to ask about costs.

22 But, the way you are phrasing your
23 question, who decided what at the Agency, before
24 any ultimate decision had been made, that is

1 going into the Agency's deliberative-process.

2 MR. FINCH: That's right. It is going into
3 what people do for a living and how what they
4 did relates to the Agency's costs, which strikes
5 me as a necessary predicate to the
6 recoverability of those costs.

7 MR. TENENBAUM: I told him I would allow him
8 to answers as to what people were doing, but
9 that's not what he asked.

10 He asked what was the Agency's
11 deliberative process pertaining to these
12 comments. He didn't ask who worked on the
13 comments.

14 It is also calls for a legal
15 conclusion, perhaps, as to who has the legal
16 authority to approve that.

17 BY MR. HILLEMANN:

18 Q. Mr. Boice, can you tell me how much
19 time was actually spent in preparing and issuing
20 the administrative orders on the record of
21 decision?

22 A. You mean off the top of my head?

23 Q. Or from referring to the documents.

24 A. Not without doing a lot of calculation,

1 not without taking a lot of time.

2 Q. How would you go about finding that
3 out?

4 A. I would -- it would be a pretty good
5 estimate if I went back during that period of
6 time and calculated my costs and Mike Berman's
7 costs and other people who were involved in the
8 review during that period of time.

9 Q. So you are telling me that the time
10 really isn't broken down at this point in a
11 manner that would reflect the amount of time
12 spent in preparing the administrative record?

13 MR. TENENBAUM: You say on the record
14 issues?

15 A. No. Those tasks weren't broken down.

16 BY MR. HILLEMANN:

17 Q. Mr. Boice, am I correct that you
18 basically made most of the decisions on behalf
19 of the EPA in connection with how to proceed
20 with the Midco sites?

21 MR. TENENBAUM: Same objection and
22 instruction.

23 BY MR. HILLEMANN:

24 Q. Just one final question.

1 How many hours would you --

2 MR. TENENBAUM: Wait, I just forget to say
3 as I indicated in the earlier rounds of Mr.
4 Boice's deposition.

5 The witness would be allowed to answer
6 a question as to who has, if he knows -- subject
7 to our objections -- who has the ultimate
8 authority -- let me rephrase that.

9 The witness would be permitted to
10 answer a question as to who at EPA ultimately
11 did make such decisions, if he knows the answer
12 to that, subject to my objection.

13 MR. KEATING: To what?

14 MR. TENENBAUM: He didn't say in the
15 question as to what particular --

16 MR. KEATING: I would like to know that.
17 Who had the ultimate authority.

18 MR. TENENBAUM: As to who made the
19 decisions -- I guess I would permit it if you
20 tie it into a particular decision.

21 MR. HILLEMANN: I just thought you refused
22 to allow me to ask that question.

23 MR. TENENBAUM: You asked whether he
24 decided --

1 MR. KEATING: We are talking ultimate.

2 MR. TENENBAUM: That is different than who.

3 If he is the one who decided, he can
4 answer your question as to who decided a
5 particular matter. If it was him, he can answer
6 that.

7 But, your question seemed to me was
8 really getting at the Agency
9 deliberative-process, rather than the end
10 result.

11 MR. HILLEMANN: Let me go back then.

12 Q. Mr. Boice, did you make the decision
13 regarding whether to accept the comments of
14 Planning Resource Corporation?

15 MR. TENENBAUM: Again, I object.

16 MR. HILLEMANN: Isn't that what --

17 MR. TENENBAUM: I allowed him to answer that
18 by indicating what that was. That is not
19 getting to a final decision document. That is
20 tied into --

21 MR. HILLEMANN: Comments.

22 MR. TENENBAUM: -- comments. That he can't
23 answer. He can only answer as to who made the
24 final decision, the record of decision,

1 administrative order, something like that.

2 MR. FINCH: You have got about four final
3 decisional documents there, don't you?

4 Isn't the record already clear as to
5 who signed them?

6 MR. TENENBAUM: It may be. I am just
7 responding to you, making the record clear as to
8 what my objection is and what I am allowing him
9 to answer.

10 BY MR. HILLEMANN:

11 Q. Mr. Boice, how many hours would you say
12 total all of your supervisors put together spent
13 in connection with giving any kind of advice in
14 connection with the Midco sites?

15 A. I don't know.

16 Q. Can you give me an estimate?

17 A. No, I can't.

18 Q. Would it be less than twenty-five
19 hours?

20 A. I don't know.

21 Q. You have no idea, it can be a thousand
22 hours or ten hours? I mean, you say you have no
23 idea?

24 A. When they give advice, it may be a

1 fifteen-minute briefing. Then a month later
2 there is another one. Then I really can't add
3 that up. There is no record of it.

4 Q. You would say one fifteen-minute
5 briefing a month?

6 A. I don't know.

7 MR. HILLEMANN: I don't have any more
8 questions.

9 CROSS EXAMINATION

10 BY MR. FINCH:

11 Q. For the record, Mr. Boice, my name is
12 David Finch, and I am one of the attorneys
13 defending Standard T, one of the attorneys
14 defending Standard T Chemical Company in this
15 case.

16 Is there anything in any of the cost
17 documents that would reflect when any Agency
18 employee started work preparing the
19 administrative orders issued in this case?

20 A. You mean in the cost documents?

21 Q. Yes.

22 A. No.

23 Q. Is there a reason why the cost
24 documents do not reflect when any Agency

1 personnel began to prepare the administrative
2 orders in this case?

3 MR. TENENBAUM: Is that relevant to a
4 non-record issue.

5 MR. FINCH: Yes.

6 It is relevant to several non-record
7 issues, including substantiation of payroll
8 distribution timesheets; substantiation of the
9 numbers that are contained in the exhibits here;
10 whether they contain information with
11 appropriate specificity to entitle the
12 government to recover them.

13 Those are three issues. They are
14 probably more.

15 Q. Do you know the answer to that, Mr.
16 Boice?

17 MR. TENENBAUM: I will object to the form.

18 A. I think --

19 MR. TENENBAUM: And to the relevance.

20 A. Mr. Hackley clearly explained how our
21 timesheets work yesterday. And I don't see why
22 we should go over it again.

23 But, generally he said that each
24 timesheet lists the project, and it identifies

1 how much time each employee during that two-week
2 period spent on the particular site.

3 And the only other definition of what
4 he was doing on the timesheets are an activity
5 code, which can be used to indicate whether it
6 was an oversight activity or an enforcement
7 activity or other types of activities.

8 BY MR. FINCH:

9 Q. You say that these are according to a
10 previous witness' testimony; as you understand
11 it, he provided an explanation as to how these
12 timesheets reflect time spent on a particular
13 site, is that what you just said?

14 A. Yes.

15 Q. Is that time actually spent or is that
16 time that is spent only for purposes of payroll
17 information?

18 A. Should be the time actually spent, or
19 that is their best estimate.

20 MR. TENENBAUM: Objection to the extent it
21 is vague and ambiguous.

22 MR. FINCH: All right.

23 Q. Do you have copies of your timesheets
24 among the cost documents, Mr. Boice?

1 A. Yes.

2 Q. Okay.

3 Could you retrieve those for me? I
4 want to ask you some questions about them.

5 A. I am not sure it is that easy. I think
6 they are organized by time period, not by
7 person.

8 Q. Maybe it would help if you were to
9 locate just a few of them. It doesn't matter
10 what time period. Three or four or five. Can
11 you do that?

12 A. I can do that.

13 (A short recess was taken.)

14 MR. FINCH: Back on the record, please.

15 I understand that the procedure that we
16 have been following here is that if I want to
17 examine the witness about a particular document,
18 we will identify it by Bates stamp number and
19 then it will be included within Group Deposition
20 Exhibit No. 3; is that right?

21 MR. GELMAN: Yes.

22 MR. FINCH: Okay. Let me try to do it that
23 way.

24 Q. Mr. Boice, I have a document that bears

1 Bates stamp number 1254 that purports to be EPA
2 Region V Superfund daily timesheet for pay
3 period 14 for the period ending 4/13/1985.

4 And I will ask you if you recognize
5 this document?

6 A. It is so long ago, I don't really
7 recognize it, but I see I signed it.

8 Q. That is your signature in the lower
9 lefthand corner of the document?

10 A. Yes.

11 Q. And that is your name in the upper
12 lefthand corner of the document?

13 A. Yes. And I would have filled it out.

14 Q. Okay.

15 Now, this document was provided in
16 connection with Midco costs; is that correct?

17 A. Correct.

18 Q. So, this document reflects to some
19 extent, does it not, Midco costs; is that
20 correct?

21 A. Yes.

22 Q. Could you show me where in this
23 document it reflects Midco costs?

24 A. Well, it doesn't directly reflect

1 costs.

2 It identifies a number of hours on
3 which the costs were based. And it identifies
4 this is for this pay period 14 in 1985, for
5 Midco I, I spent a total of 17.5 hours, and for
6 Midco II, I spent a total of 18 hours.

7 Q. If you look, if you go vertically down
8 the columns, there are a bunch of columns, are
9 there not, with letters like S, M, T, W, and so
10 forth; do you see those?

11 A. Right. Those are the days of the week.

12 Q. Okay. Those are days of the week.

13 Then if you go vertically down the
14 column, you see an entry for totals; is that
15 right?

16 A. That's correct.

17 Q. So on the first Tuesday listed on this
18 document, you work a total of 9 hours; isn't
19 that right?

20 A. Correct.

21 Q. And the following day you worked a
22 total of 9 hours, isn't that correct?

23 A. Correct.

24 Q. And the next day you worked a total of

1 9 hours, isn't that correct?

2 A. Correct.

3 Q. And the next day you worked a total of
4 9 hours, isn't that correct?

5 A. Yes.

6 Q. And the next workday you worked a
7 together of 9 hours, isn't that correct?

8 A. Yes.

9 Q. So on each of these days you worked 9
10 hours?

11 A. Right.

12 Q. Not 8.5 hours, is that correct?

13 A. That's right.

14 Q. And not 9.25 hours, isn't that correct?

15 A. I should say that sometimes we work
16 overtime, but we don't get compensated for it.

17 Q. You don't put the overtime down?

18 A. That's right. Normally I probably
19 spend a little extra time.

20 Q. Why don't you get compensated for
21 overtime, are you the government's equivalent of
22 a non-exempt employee?

23 A. I don't know what a non-exempt employee
24 is.

1 MR. HILL: I have no further questions.

2 MR. TENENBAUM: We don't waive signature.

3 MR. HILL: That is it. Thanks, Mr. Boice.

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12 DEPOSITION ADJOURNED

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1 Q. Why don't you get paid for overtime?

2 A. My understanding is that once we get to
3 the GS-12 position, unless -- first of all, to
4 get overtime you have to have it pre-approved.

5 Q. Pre-approved by whom?

6 A. By the supervisors.

7 Q. Which supervisor, your supervisor,
8 somebody else's supervisor or project
9 supervisor?

10 A. I'm not sure how far it goes up.

11 Q. Did you ever find it disconcerting that
12 you weren't getting paid overtime?

13 MR. TENENBAUM: You didn't let him finish
14 his answer.

15 BY MR. FINCH:

16 Q. All right.

17 A. I don't know how far up in the
18 supervisor chain the approval is required. It
19 usually would have to be on a particular
20 well-defined aspect of the project.

21 Q. A particular well-defined aspect of the
22 project, as opposed to a general, undefined
23 aspect of the project?

24 A. I think you are being a little silly.

1 But, it has to be a clearly defined
2 task that would have to be done. And they
3 don't -- it seems to be a general policy that we
4 don't get overtime just for spending extra time
5 at work doing things that need to be cleaned up.

6 Q. That seems to be the general policy,
7 that is your impression of what the general
8 policy is?

9 A. That's right.

10 Q. Did you ever put in for overtime on any
11 work?

12 MR. TENENBAUM: You never let him finish
13 finish his answer.

14 He said as to the -- as to his -- you
15 asked why he didn't get overtime or something
16 like that.

17 He said first of all, and I don't know
18 whether there was a second of all or not. But,
19 I do want the record to be clear you didn't let
20 him answer.

21 BY MR. FINCH:

22 Q. Do you have anything else you want to
23 add?

24 A. The second of all is what I said

1 before. Once you get to the 12 level, it is
2 generally in EPA understood that you will have
3 to put in a little extra overtime at work.

4 Q. You mean GS-12?

5 A. Yes.

6 Q. That is a salary classification level
7 or something like that?

8 A. Yes.

9 Q. Did you ever put in for overtime for
10 any work you did in connection with either of
11 the Midco sites?

12 A. Yes.

13 Q. Do you recall when you put in for
14 overtime?

15 A. Yes.

16 Q. And when was that?

17 A. That was in 1985, when we were
18 responding to the first set of the generator
19 interrogatories.

20 I got overtime approved for coming in
21 and spending extra time to respond to those
22 interrogatories.

23 Q. What GS level were you at that time?

24 A. I was a GS-12.

1 Q. At any time before or after that, did
2 you put in for overtime in connection with work
3 you did for either of the Midco sites?

4 A. I don't think so.

5 Q. Okay.

6 MR. TENENBAUM: You say put in for overtime.

7 Are you distinguishing extra
8 compensation for overtime is what you mean? As
9 opposed to working more than eight hours a day?

10 MR. FINCH: Yes, that's right.

11 When I say put in for overtime, I mean
12 seeking extra compensation for the additional
13 hours.

14 MR. KEATING: I presume that you are
15 presuming that he got it, too, if he put in for
16 it.

17 MR. FINCH: We will get there.

18 Q. How did you put in for overtime when
19 you were answering the interrogatories?

20 A. How did I do it. I filled out a form
21 requesting overtime, and gave it to my
22 supervisor.

23 Q. There is a form available for that
24 purpose, or is it one that you just sort of --

1 A. That's correct.

2 Q. Okay.

3 Is it an EPA form or is it another
4 governmental form?

5 A. I don't know.

6 Q. You don't remember or you don't know?

7 A. I don't know whether it is a general
8 government form or an EPA form.

9 Q. What supervisor did you give the form
10 to?

11 A. Russell Diefenbach.

12 Q. Was this before or after you did the
13 work?

14 A. Before.

15 Q. And he was your immediate supervisor at
16 the time?

17 A. Yes.

18 Q. Do you know whether he approved that
19 request for overtime?

20 A. Yes, he did.

21 Q. And when did you find out that he
22 approved that request, was it before or after
23 you did the work?

24 A. Before.

1 Q. And do you recall specifically what pay
2 period that work was completed in?

3 A. No, I don't.

4 Q. Were you in fact paid the overtime?

5 A. Yes.

6 Q. Do you recall whether you were paid the
7 overtime at the end of the pay period in which
8 you did the work or at some other time?

9 A. It was along with my regular check.

10 Q. And was it the end of the pay period
11 during which you performed the work?

12 A. I think we get paid -- when we get
13 paid, we get paid for the two-week period two
14 weeks prior to the one that just elapsed.

15 Q. Because you were paid for that work,
16 you included that overtime work in the Superfund
17 daily timesheets?

18 A. I don't remember.

19 Q. Are you testifying that it is possible
20 that you did not include that overtime work in
21 the Superfund daily timesheets?

22 A. I testified that I don't remember doing
23 that. I don't know whether I did or not.

24 Q. Do you know at what rate you were paid

1 the overtime, at a multiple of your salary or
2 your hourly equivalent of your salary, at the
3 same rate as that hourly equivalent?

4 A. If I remember right, once your pay is
5 at -- there is a certain lid on the pay. So, I
6 don't remember whether it is GS-11, step 10 or
7 what.

8 But, for a lot of people when they work
9 overtime, if they do get it, they get paid less
10 than they do on their regular time. So I don't
11 know what the pay multiplier would be.

12 Q. Do you know whether the EPA is seeking
13 recovery of the costs connected with that
14 overtime?

15 A. I would have to inspect the documents.

16 Q. All right.

17 Let's go back to document Bates stamped
18 number 1254.

19 On this it states you worked only 8
20 hours on the last Tuesday of the pay period; is
21 that correct?

22 A. That's correct.

23 Q. Then you worked 9 hours on Wednesday?

24 A. Yes.

1 Q. Then 9 hours on the Thursday?

2 A. Correct.

3 Q. And then 9 hours on the Friday?

4 A. That's correct.

5 O. I would hand to you what has been Bates
6 stamped as document number 1256, which purports
7 to be an EPA Region V Superfund daily timesheet
8 for the pay period 16, for the period ending May
9 18, 1985, also bearing your name and signature;
10 is that correct?

11 A. That's correct.

12 Q. Okay.

13 Let's look at the totals for the daily
14 work during this pay period. On the first
15 Tuesday it indicates a 9, is that correct, you
16 worked 9 hours that day?

17 A. That's correct.

18 Q. And then the next day you worked 9
19 hours; is that correct?

20 A. That's correct.

21 Q. And the next day you worked 9 hours; is
22 that correct?

23 A. That's correct.

24 Q. The next day you worked 9 hours; is

1 that correct?

2 A. That's correct.

3 Q. And the next day you worked 9 hours; is
4 that correct?

5 A. That's correct.

6 Q. And the next day you worked 8 hours,
7 isn't that correct?

8 A. That's correct.

9 Q. That's the last Tuesday in the pay
10 period, isn't that correct?

11 A. That's right.

12 Q. Now, let's take a look back at the
13 document marked or Bates stamped 1254. Do you
14 see that?

15 A. Yes.

16 Q. And, interestingly enough, the last
17 Tuesday in that pay period you worked 8 hours;
18 is that correct?

19 A. That's correct.

20 Q. And let's go back to document number
21 1256; the next day you worked 9 hours; is that
22 correct?

23 A. That is correct.

24 Q. The next day you worked 9 hours; is

1 that correct?

2 A. That's correct.

3 Q. The next day you worked 9 hours, is
4 that correct?

5 A. That's correct.

6 Q. Isn't it true that if you compare the
7 work that you did during pay period 14, you
8 worked 9 hours every day except the last Tuesday
9 in that pay period, during which you worked 8
10 hours; is that right?

11 A. That's correct.

12 Q. And during pay period 16, you worked 9
13 hours every day except the last Tuesday of that
14 pay period, during which you worked 8 hours; is
15 that correct?

16 A. That is not -- I should go back.

17 The first Monday of the pay period I
18 didn't work.

19 Q. At all?

20 A. Right.

21 Q. Okay.

22 A. So the total hours is 80 hours, it is
23 called a compressed work week. We work 9 hours
24 a day eight days, every two weeks one 8-hour day

1 and one day off every two weeks.

2 Q. So the reason you are testifying that
3 these totals look at they do is because you are
4 required to work hours that way; is that
5 correct?

6 A. No, it is a voluntary program. We can
7 either have -- we can either have 8-hour days
8 ten days ever two weeks, or we can work the
9 compressed work, which consists of 9 hours a day
10 eight days every two weeks, one day off and one
11 8-hour day.

12 Q. What you do is that you take the total
13 time that you are in the office, and if under
14 the program you are to be in the office 9 hours,
15 you bill out 9 hours; isn't that correct?

16 MR. TENENBAUM: Object to the form.

17 A. No.

18 I bill the actual number of hours I
19 work. And it also happens to be the amount of
20 hours I am required to be there.

21 BY MR. FINCH:

22 Q. To the minute, right?

23 A. But at least -- I have at least put in
24 the number of hours indicated here.

1 Q. At least?

2 A. Uh-hum.

3 Q. You are saying you might have put in
4 more hours than what is indicated there?

5 A. Yes.

6 Q. Why didn't you put those down, because
7 you weren't paid for them?

8 A. I wouldn't have been paid for them,
9 right.

10 Q. I note that on these timesheets, your
11 time is divided in quarter-hour increments, is
12 that accurate?

13 A. Yes.

14 Q. Is there a reason that you divided your
15 time in quarter-hour increments?

16 A. That is the minimum. We can break it
17 down as much as by the quarter-hour, under our
18 system.

19 Q. As much as by or are you entitled to
20 break it down by some increment other than a
21 quarter hour?

22 A. It can be a quarter hour, half hour,
23 full hour. But, we are supposed to -- we can
24 report to as much as the nearest quarter hour

1 in this case.

2 Q. I am not sure I understand that.

3 Please help me understand.

4 Are you required to break your time
5 down into applicable quarter-hour increments as
6 little as a quarter of an hour, or are you
7 entitled to break it down according the other
8 increments, such as rounding it off to the
9 nearest hour?

10 A. I think we are required -- we can break
11 it down to the nearest quarter hour. But, I
12 don't think it is a requirement.

13 For example, in this pay period, I
14 have -- on that Tuesday you are referring to, I
15 have 1.25 hours for Midco I and 1.25 hours for
16 Midco II. That means probably I was working on
17 something for both Midco I and Midco II for two
18 and a-half hours. So I broke it down, so I
19 split it in half.

20 Q. How do you know what you were -- about
21 this quarter-hour increment procedure you have
22 testified to; did someone tell you, did you read
23 it, how did you learn it?

24 A. There was probably some type of

1 guidance document on it.

2 Q. You are saying there was probably an
3 EPA guidance document as to how you report your
4 time?

5 A. Yes.

6 Q. Is it possible that you learned this
7 from something other than an EPA guidance
8 document?

9 A. Probably my supervisor might have
10 discussed it, or one of the supervisors
11 discussed it.

12 Q. Are you testifying that the breaking of
13 the time down into these increments was a matter
14 of Agency policy?

15 A. Yes.

16 As far as I know, it was Agency policy
17 that we could break down the time into
18 increments as small as one-quarter hour.

19 Q. According to this policy, as you
20 understand it, would you have had the right to
21 put down a full hour if all you did was work say
22 35 minutes on a project?

23 A. I don't think we are supposed to, no.

24 Q. Why not?

1 A. Because we are supposed to put in the
2 actual time, time we spent on the project.

3 Q. To the nearest quarter hour or to the
4 nearest hour or to the nearest half hour?

5 A. I think it is to the nearest quarter
6 hour.

7 Q. You think?

8 A. Uh-hum.

9 Q. Does uh-hum mean yes?

10 A. That's correct.

11 Q. So, it is your testimony that this
12 Agency guidance document specifies the time is
13 to be rounded off to the nearest quarter hour?

14 A. I'm not sure it says that, whether
15 that's -- the smallest it can be rounded,
16 expressed into is the nearest quarter hour.

17 Q. Is the smallest.

18 But, it could be to a larger number
19 like, say, the nearest half hour?

20 A. I'm not sure.

21 Q. Do you know anyone who does know the
22 answer to that question?

23 A. Probably some of the supervisors know.

24 Q. Does your supervisor know the answer to

1 that question?

2 A. Probably.

3 Q. So you don't know as you sit here today
4 as a 30 (b) 6 government witness whether or not
5 it is proper under EPA policy for someone
6 putting in time on the Midco sites to round off
7 their time to the nearest hour?

8 MR. GELMAN: Object as to form.

9 A. No, I don't know.

10 MR. FINCH: Okay.

11 MR. TENENBAUM: Mr. Hackley testified as to
12 that yesterday.

13 A. He did?

14 MR. TENENBAUM: Yes.

15 BY MR. FINCH:

16 Q. When you filled out document 1254 or
17 1256, did you fill it out on a contemporaneously
18 cumulative basis, or did you fill it out at the
19 end of the two-week period?

20 A. I filled it out at the end of the
21 two-week period.

22 Q. How did you know how much time you
23 spent on the various items contained within
24 these documents at the end of the two-week

1 period?

2 A. I keep a work diary of what I am doing
3 during the workday.

4 Q. What does this work diary look like?

5 A. It is a little book that says work
6 diary on it.

7 Q. Is it a loose-leaf notebook,
8 spiral-bound notebook?

9 A. Well, some of them I have used are
10 spiral-bound and some of them I bought from
11 Woolworth. It is a little bound book that has a
12 page for each day.

13 Q. Page for each day?

14 A. Uh-hum.

15 Q. And what did you put down on these
16 pages?

17 A. Generally what I was doing during the
18 day.

19 Q. What you were doing?

20 A. Yes.

21 Q. It would be a written description of
22 what you were doing?

23 A. Not necessarily a description.
24 Identification of what I was doing. Sometimes I

1 put some descriptions in it.

2 Q. And the amount of time you spent doing
3 it?

4 A. Yes, the time period.

5 Q. Why did you keep this description in
6 addition to the time?

7 A. Because I wanted to.

8 Q. You were not obligated to do this?

9 A. No. There is no requirement to keep a
10 work diary.

11 Q. Did you consult this work diary in
12 preparing these daily timesheets?

13 A. Yes, I always do.

14 Q. So you took the numbers that you wrote
15 down in the work diary and put them in the daily
16 timesheets?

17 A. No. There's no numbers there.

18 Q. There are no numbers at all?

19 A. I have the time periods when I worked
20 on certain projects, so I look at the time
21 periods, I add up the time I spent on a
22 particular project and put it on the timesheet.

23 Q. How did you know how much time you
24 spent on a project?

1 A. Well, as I just stated, I have the work
2 diary. I would write down during what time
3 periods I was working on certain projects. So
4 when I go to that day at the end of the two-week
5 period, I look at what I was doing that day and
6 for what time periods. I add up the time I
7 spend on each project and put it on the
8 timesheet.

9 Q. Your work diary does have numbers in
10 it; is that right?

11 A. I just said they have the time periods.

12 Q. The time periods?

13 A. But not the number of hours.

14 Q. What do you mean time period?

15 A. Meaning 8:00 a.m. until 10:00 a.m.,
16 11:00 a.m. to 1:00 p.m., for example?

17 Q. Do you ever work on two things at once?

18 A. Yes.

19 Q. How did you note that in your diary?

20 A. I just write down what I am doing
21 during that period of time.

22 Q. You say that you are not required to
23 keep these diaries; is that right?

24 A. That's correct.

1 Q. Do you know if other employees keep
2 such diaries?

3 A. I don't know.

4 Q. Did your supervisor ever suggest to you
5 that you keep such a diary?

6 A. No.

7 Q. Do you know whether other employees
8 whose time is listed for the Midco reports keep
9 such diaries?

10 A. No.

11 Q. Do you know whether other employees
12 whose time is listed on the Midco cost documents
13 filled out their daily time sheets at the end of
14 the pay period or whether they filled them out
15 on a contemporaneously ongoing basis?

16 A. No.

17 Q. You just don't know?

18 A. No, I don't.

19 Q. Do you know of any EPA employee who has
20 filled out one of these daily timesheets at the
21 end of the pay period without consulting any
22 documents to see what time he or she actually
23 spent on a daily basis?

24 A. I don't know how other people fill out

1 the timesheets.

2 Q. Is a blank timesheet issued to EPA
3 employees at the beginning of the pay period so
4 that they have it in their possession and can
5 fill it out on a contemporaneous basis
6 throughout the pay period?

7 A. Blank timesheets are available to all
8 the employees so they can fill it out
9 contemporaneously if they want to.

10 Q. Do you eat lunch?

11 A. Yes.

12 Q. Are lunch periods included in the
13 totals listed on documents 1254 or 1256?

14 A. No. We are not paid for lunch.

15 Q. How much time do you take for lunch
16 every day?

17 A. Half an hour to 45 minutes.

18 Q. Never less than a half an hour, you
19 never go for a quick one?

20 A. Sometimes we work during lunch.

21 Q. Pardon me?

22 A. Sometimes we work through lunch.

23 Q. Then it would show up in your pay
24 period on the timesheet?

1 A. No. That would be some of the overtime
2 we don't get paid for.

3 Q. Now, if you had a half an hour lunch
4 period, would you work any more in addition to
5 that lunch period than if you had a fifteen
6 minute lunch period? Do you understand that
7 question?

8 It is a little garbled. Forget it.

9 On all these days except the Tuesday,
10 the last Tuesday of the pay period you worked 9
11 hours, when you worked at all; is that right?

12 A. That's correct.

13 Q. If you had a half an hour lunch period
14 in there on a Monday, and a forty-five minute
15 lunch period on a Tuesday, does that mean that
16 on the Monday you didn't stay as late as you did
17 on the Tuesday, so you got all your nine hours
18 in?

19 Do you understand that question?

20 A. Would you repeat that question.

21 Q. All right.

22 Let's say, today is -- what is today,
23 today is Thursday. So according to these
24 timesheets, since it is a Thursday, you would

1 necessarily work nine hours; is that correct?

2 A. Uh-hum.

3 Q. Does uh-hum mean yes?

4 A. Yes.

5 Q. Okay.

6 If you took a half an hour lunch today,
7 as opposed to a one-hour lunch, would that
8 affect the total amount of time you spend
9 working for purposes of these timesheets?

10 Do you understand that question?

11 A. I don't understand the question.

12 Q. All right.

13 What don't you understand about it? It
14 seems kind of clear. I don't want to keep
15 asking the same thing.

16 MR. KEATING: I am not even sure what he
17 eats for lunch.

18 MR. FINCH: We will get to that. Don't
19 worry.

20 A. Is what you mean is if I took say a
21 little longer than half an hour for lunch, did I
22 stay late that day.

23 Q. That's what I was trying to ask.

24 A. Sometimes I would and sometimes I

1 wouldn't. I don't say I always did.

2 Q. If you didn't, wouldn't that affect the
3 total number of hours you were supposed to have
4 worked according to these timesheets?

5 I mean, it always came out to a 9
6 unless it was the last Tuesday of the pay
7 period, where it came out to an 8. And yet you
8 have testified that the amount of time you
9 actually spent during a lunch period varied.

10 A. So what is your point now?

11 Q. My question is, how you can come up
12 with the same totals even though one of the
13 variables changes -- to put it into engineering
14 language?

15 MR. TENENBAUM: Asked and answered.

16 A. So you are saying I should have put
17 down 8 hours and 55 minutes instead of 9 hours?

18 BY MR. FINCH:

19 Q. I am asking you. What do you think?

20 MR. TENENBAUM: Object to this line of
21 questioning. You are asking for the witness to
22 speculate. You are asking a hypothetical
23 question.

24 A. I would say usually I spend more time

1 at work than I needed to. So that would more
2 than make up for taking a little extra time at
3 lunch sometimes.

4 BY MR. FINCH:

5 Q. Okay.

6 Do you ever do anything else during the
7 day that doesn't constitute work?

8 We have accounted for lunch. Do you
9 ever take a coffee break?

10 A. Yes. But, that is allowed in the
11 government regulations.

12 We are allowed to take a 15-minute break in
13 the morning and a 15-minute break in the
14 afternoon.

15 Q. Who do you bill that to, whoever you
16 were working on at the time that you took the
17 break?

18 A. I think I would bill it to the general
19 account.

20 Q. Is there a general account line in
21 these timesheets?

22 A. It is right here.

23 Q. I see.

24 MR. HILLEMANN: Which line are you pointing

1 to?

2 BY MR. FINCH:

3 Q. Is that the management and support
4 line, account code 4; is that what you are
5 pointing to?

6 A. Yes.

7 I guess since the Agency allows it, it
8 would be considered part of the work day.

9 Q. Is it your understanding that any time
10 you spent for Midco I or Midco II as reflected
11 on these timesheets is time for which costs may
12 be recovered by the United States in this case?

13 MR. GELMAN: What was --

14 Can you read that back, please?

15 (The record was read.)

16 I would object to that, because it
17 calls for a legal conclusion and also as to
18 form.

19 MR. FINCH: All right. Let me withdraw it
20 then, ask it another way.

21 Q. Are you aware of any process by which
22 time you spent on Midco I and Midco II as
23 reflected on the daily timesheets supplied to us
24 in this case was eliminated or discounted for

1 purposes of compiling costs attributable to
2 Richard Boice for which the government seeks
3 recovery in this case?

4 MR. GELMAN: Same objection but he can
5 answer.

6 A. If what you mean is have I filled out a
7 timesheet and we decided that for some reason
8 because of improper documentation on the
9 timesheet that it shouldn't be recovered from
10 the defendants.

11 BY MR. FINCH;

12 Q. That's not what I mean. I am not
13 saying for improper documentation. It could be
14 for any reason at all.

15 Was there any discounting or
16 elimination of that time for purposes of adding
17 up the costs that the government is seeking in
18 this litigation?

19 A. From the time recorded on the
20 timesheet?

21 Q. From the time reported on the
22 timesheet.

23 A. For my work?

24 Q. We will start with your work, since I

1 presume you are most familiar with that.

2 A. Not that I know of. No.

3 O. Okay.

4 So, therefore, every hour reflected on
5 your timesheets for Midco I and Midco II is an
6 hour for which the government is seeking cost
7 recovery in this case; is that right?

8 A. That's right. And I probably spent
9 quite a bit more than what we are requesting.

10 Q. Than what is in the timesheets there
11 which the government is seeking to recover, is
12 that right?

13 A. That's correct.

14 MR. GELMAN: Again the same objection, no
15 foundation.

16 BY MR. FINCH:

17 Q. Does the government have any way of
18 knowing what it is you did during the hours that
19 are reflected on these timesheets?

20 MR. GELMAN: Object to that. Somewhat
21 ambiguous, who the government is. Anybody in
22 the government you want to identify?

23 MR. FINCH: The United States of America is
24 seeking recovery of these costs. The United

1 States of America is asserting that these costs
2 are recoverable.

3 MR. GELMAN: The costs are reflected in some
4 of the cumulative cost summaries, yes.

5 MR. FINCH: Okay. That is what I mean by
6 the government. The party that is asserting
7 that the costs are recoverable.

8 Q. Do you understand the question?

9 MR. TENENBAUM: It does not address the
10 defect of the objection.

11 MR. FINCH: I am just clarifying it, if it
12 helps.

13 A. What was the question?

14 Q. Let me rephrase it.

15 The United States of America has no way
16 of knowing what it was you did during the hours
17 reflected on these timesheets, isn't that
18 correct?

19 A. Well, I am part of the United States of
20 America.

21 Q. So am I.

22 A. So what do you mean?

23 Q. What I mean is the party that is
24 seeking --

1 MR. TENENBAUM: Are you employed by the
2 United States?

3 MR. FINCH: He says he is part of it and so
4 am I. I am a citizen.

5 MR. GELMAN: Come on, counsel, let's get
6 moving.

7 MR. FINCH: No, I was frankly -- and let the
8 record reflect it was a smart-alecky answer to a
9 question that I think was fairly
10 straightforward.

11 MR. TENENBAUM: I think it was a perfectly
12 legitimate answer.

13 We objected on the ground that we
14 didn't know who you meant when you say United
15 States of America.

16 MR. FINCH: The party seeking recovery of
17 the costs is what I said. And the party seeking
18 recovery of the costs, Alan, is the United
19 States.

20 MR. TENENBAUM: If I asked that question of
21 Standard T, you would object and probably
22 instruct him not to answer. Wouldn't you?

23 MR. FINCH: If you were to ask Standard T
24 what costs Richard Boice -- never mind.

1 MR. TENENBAUM: If I were to ask Standard T
2 does Standard T do A or B, you would object.
3 Who at Standard T.

4 A. In spite of that, you can see these are
5 signed by a supervisor and so there is some
6 oversight of completion of the timesheets.

7 If the supervisor thinks that the
8 employee is doing something unreasonable in
9 filling out the timesheets, he should do
10 something about it.

11 BY MR. FINCH:

12 Q. Okay. That really doesn't answer my
13 question, but let's talk about that for a
14 minute.

15 Were you present when a supervisor
16 signed these timesheets?

17 A. I might have been at work, but I wasn't
18 sitting over his shoulder, no.

19 Q. When do you submit the timesheets, you
20 do so how many days in advance of the time that
21 you are paid for the time reflected in the
22 timesheets, do you know?

23 A. They are completed at the end of the
24 week, at the end of the two-week period.

1 Q. Do you recall ever having been
2 questioned by your supervisor about anything you
3 did in filling out test forms?

4 A. Yes.

5 Q. Do you recall a specific instance?

6 A. I put down, I made some type of mistake
7 on the account number, something like that. I
8 don't remember.

9 Q. Do you ever recall one of your
10 supervisors asking you to explain or just tie
11 the amount of time you put down on any item
12 relating to Midco?

13 A. No.

14 Apparently he never thought it was
15 unreasonable.

16 Q. Is it your testimony that your
17 supervisors are obligated to review these
18 timesheets to determine whether the amount of
19 time is reasonable?

20 MR. TENENBAUM: Objection. Calls for a
21 legal conclusion.

22 A. They review it.

23

24 BY MR. FINCH:

1 Q. Your understanding. I don't want a
2 legal conclusion.

3 Is it your understanding that you will
4 be supervised as to the reasonableness of the
5 time that appears on these timesheets?

6 A. Yes.

7 I think the supervisor looks at them
8 and if they see something there that appears
9 unreasonable to them, they will do something
10 about it.

11 It is also reviewed by our financial
12 management branch.

13 Q. They don't know, neither your
14 supervisor nor the financial management people
15 know what it is that you did during these hours?

16 A. My supervisor has a good idea of what I
17 did during the two weeks.

18 Q. For each of these two-week periods?

19 A. When he signs, before he signed it, he
20 would have known.

21 Q. He would have known?

22 A. (Nodding head.)

23 MR. TENENBAUM: Is that a yes? You nodded
24 your head. You have to say yes.

1 MR. HILLEMANN: Answer yes or no for the
2 record.

3 A. As to whether or not he reviewed it.
4 He reviewed it at the end of the two-week
5 period.

6 BY MR. FINCH:

7 Q. How long have you been supervised by
8 Melinda Gould?

9 A. I think about two years.

10 Q. Okay.

11 During that two-year period, is it your
12 belief that Ms. Gould was aware of everything
13 you were doing on the Midco sites for each of
14 the pay period increments?

15 A. I don't think I said she was aware of
16 everything.

17 I said she knew what I was doing
18 generally on the projects.

19 Q. So that if you had ten hours during the
20 pay period on the Midco sites, Ms. Gould would
21 have known basically what you were doing during
22 that ten-hour period?

23 A. She would have a pretty good idea of
24 what I was doing.

1 Q. Did you tell her?

2 A. We talked, yes.

3 MR. TENENBAUM: For the record, how much
4 more do you have?

5 MR. FINCH: I have a little while. Why
6 don't we break?

7 MR. TENENBAUM: Maybe we can finish.

8 Does anyone else have any questions?

9 MR. HILL: I have maybe five minutes, ten
10 minutes.

11 MR. FINCH: I think we ought to break.

12 (Discussion had off the record.)

13

14

15

16 (Whereupon a recess was taken
17 until 1:15 o'clock p.m. of the
18 same day.)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MIDWEST SOLVENT RECOVERY INC.;
MIDWEST INDUSTRIAL WASTE DISPOSAL
COMPANY, INC.; INDUSTRIAL TECTONICS,
INC.; V & F CORPORATION; ERNEST DE
HART; EDWARD P. CONLEY; HELGA C.
CONLEY; LOVIE DE HART; CHARLES A.
LICHT; DAVID E. LICHT; DELORES LICHT;
EUGENE KLISIAK; JEANETTE KLISIAK;
LUTHER G. BLOOMBERG; ROBERT J. DAW-
SON, JR.; JOHN MILETICH; MARY
MILETICH; PENN CENTRAL CORPORATION;
INSILCO CORPORATION; RUST-OLEUM, INC.;
ZENITH RADIO CORPORATION; STANDARD T
CHEMICAL COMPANY, INC.; AMERICAN CAN
COMPANY, INC.; PRE FINISH METALS, INC.;
PREMIER COATINGS, INC.; MOTOROLA, INC.;
and DESOTO, INC.;

Defendants.

AMERICAN CAN COMPANY, INC.,
DESOTO, INC., INSILCO CORPORATION,
MOTOROLA, INC., PRE FINISH METALS,
INC., PREMIER COATINGS, INC.,
RUST-OLEUM, INC., STANDARD T
CHEMICAL COMPANY, INC.,
ZENITH RADIO CORPORATION, JOHN
MILETICH, MARY MILETICH and THE
PENN CENTRAL CORPORATION,

Third-Party Plaintiffs,

vs.

ACCUTRONICS, ACTIVE SERVICE CORP.,
AMERICAN NAMEPLATE & DECORATING CO.,

) Civil Action
) No. H-79-556
) Third-Party
) Complaint

1	AMERICAN PRINTER & LITHOGRAPHER CO.,)
	AMERICAN RIVET COMPANY, AFECO,)
2	APPROVED INDUSTRIAL REMOVAL, INC.,)
	ARMOUR PHARMACEUTICAL, ARTISAN HAND)
3	PRINTS, ASHLAND CHEMICAL CO.,)
	AVENUE TOWING COMPANY, BARR &)
4	MILES, INC., BELDEN ELECTRICAL)
	PRODUCTS DIV. OF COOPER INDUSTRIES,)
5	INC., BRETFORD MANUFACTURING, INC.,)
	BUTLER SPECIALTY COMPANY, INC.,)
6	BY PRODUCTS MANAGEMENT, CALUMET)
	CONTAINER, CARGILL, INC.,)
7	CHEMALLOY DIVISION OF FISHER- CALO)
	CHEMICAL CO., CHICAGO ETCHING CORP.,)
8	CHICAGO NAMEPLATE COMPANY,)
	CHICAGO ROTOPRINT CO.,)
9	C & C INDUSTRIAL MAINTENANCE CORP.,)
	CITY OF GARY, INDIANA, C.P. CLARE)
10	DIVISION OF GENERAL INSTRUMENTS)
	CORP., C.P. HALL CO.,)
11	C.P. INORGANICS, COMMANDER PACKAGING,)
	CONNOR FOREST INDUSTRIES, CONSERVA-)
12	TION CHEMICAL, CONSUMERS PAINT)
	FACTORY, INC., CONTINENTAL)
13	WHITE CAP DIVISION OF CONTINENTAL)
	CAN COMPANY, CONVERSIONS BY GERRING,)
14	COUNTY OF DU PAGE, ILLINOIS,)
	CRONAME, INC., CROWN CORK & SEAL)
15	CO., INC., CULLIGAN INTERNATIONAL)
	COMPANY, CULLIGAN WATER CON-)
16	DITIONING, INC., FRANK J. CURRAN,)
	CUSTOM METALS PROCESSING,)
17	DAP, INC. OF BEECHAM COSMETICS,)
	DAUBERT CHEMICAL COMPANY,)
18	DEUBLIN COMPANY, DOBSON CONSTRUCTION)
	INC., DUO FAST CORPORATION, DU-TONE)
19	CORP., HAROLD EGAN, EKCO HOUSEWARE)
	CO., EL-PAC, INC., EMBOSOGRAPH DIS-)
20	PLAY MFG. CO., ESS KAY ENAMELING, INC.,)
	ETHICON, INC., FELT PRODUCTS MFG. CO.,)
21	FLINT INK CORP., FURNAS ELECTRIC)
	CO., GEARMASTER DIVISION, EMERSON)
22	ELECTRIC, THE GILBERT & BENNETT)
	MFG. CO., GLD LIQUID DISPOSAL,)
23	HENRY PRATT COMPANY, J.M. HUBER)
	CORPORATION, HYDRITE CHEMICAL CO.,)
24	INTAGLIO CYLINDER SERVICE, INC.,)

1 JOHNSON & JOHNSON, J & S TIN MILL)
 PRODUCTS, KNAACK MFG. CO., LANSING)
 2 SERVICE CORPORATION, LAUTTER)
 CHEMICAL, LIQUID DYNAMICS,)
 3 LIQUID WASTE, INCORPORATED,)
 STEVE MARTEL, MASONITE CORPO-)
 4 RATION, McWHARTER CHEMICAL CO.,)
 METAL RECLAIMING CORPORATION,)
 5 METROPOLITAN CIRCUITS,)
 MIDWEST RECYCLING COMPANY, MONTGOMERY)
 6 TANK LINES, MORTON THIOKOL INC.,)
 MR. FRANK, INC., NAMSCO, INC.,)
 7 NATIONAL CAN CORPORATION, NAZ-DAR CO.,)
 NUCLEAR DATA, INC., PPG INDUSTRIES,)
 8 INC., PASLODE COMPANY, PIERCE & STEVENS)
 CHEMICAL CORP., PIONEER PAINT PRODUCTS,)
 9 PREMIER PAINT CO., PYLE-NATIONAL CO.,)
 R-LITE, REFLECTOR HARDWARE CORP.,)
 10 REGAL TUBE, RELIANCE UNIVERSAL, INC.,)
 RICHARDSON GRAPHICS, JOHN ROSCO,)
 11 ROZEMA INDUSTRIAL WASTE, ST. CHARLES)
 MANUFACTURING, SCHOLLE CORPORATION,)
 12 SCRAP HAULERS, SHERWIN WILLIAMS)
 COMPANY, SHELD COATINGS, INC.,)
 13 SIZE CONTROL COMPANY, SKIL CORPORA-)
 TION, SPECIAL COATINGS CO.,)
 14 SOUTHERN CALIFORNIA CHEMICAL,)
 SPECIALTY COATINGS, INC.,)
 15 SPOTMAILS, INC., STAR TRUCKING, STERN)
 ELECTRONICS, INC., JOE STRANSNICK,)
 16 STUART CHEMICAL & PLANT, INC.,)
 SUMMER & MACE, SUN CHEMICAL,)
 17 SYNTECH WASTE TREATMENT CENTER,)
 T.R.C., TEEPACK, INC., ALFRED TENNY,)
 18 THIELE-ENGDAHL, INC., THOMPSON)
 CHEMICALS, TIFFT CHEMICALS,)
 19 TOUNEY DISPOSAL, TRIPLE S. ETCHANTS,)
 UNIROYAL, INC., UNITED RESIN AD-)
 20 HESIVES, INC., U.S. ENVELOPE, U.S.)
 SCRAP AND DRUM, U.S. STEEL CORP., UNI-)
 21 VERSAL RESEARCH LABORATORIES, INC.,)
 UNIVERSAL TOOL & STAMPING COMPANY,)
 22 VANDER MOULEN DISPOSAL, VELSICOL)
 CHEMICAL CORP., VICTOR GASKET)
 23 DIVISION OF DANA CORPORATION,)
 WARNER ELECTRIC BRAKE & CLUCH CO.,)
 24 WARWICK CHEMICAL, WASTE RESEARCH &)

1 RECYCLING, XEROX CORPORATION, and)
2 other unidentified persons,)

3 Third-Party Defendants.)
4
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7

8 DEPOSITION OF RICHARD E. BOICE

9 August 9, 1990
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5 The continued deposition of RICHARD EDWIN
6 ROICE, called for examination by the Defendants,
7 pursuant to notice and pursuant to the
8 provisions of the Federal Rules of Civil
9 Procedure of the United States District Courts,
10 pertaining to the taking of depositions for the
11 purpose of discovery, taken before Arnold N.
12 Goldstine, a Notary Public and Certified
13 Shorthand Reporter within and for the County of
14 Cook and State of Illinois, at 200 West Wacker
15 Drive, on August 9, 1990, commencing at the hour
16 of 1:30 o'clock p.m.
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APPEARANCES:

Mr. Alan S. Tenenbaum and
Mr. Leonard M. Gelman
Trial Attorney
Environmental Enforcement Section
Land & Natural Resources Division
U.S. Department of Justice
P. O. Box 7611
Ben Franklin Station
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-and-

Mr. Michael R. Berman
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Solid Waste & Emergency Response Branch
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Region V
230 South Dearborn Street
Chicago, Illinois 60604

-and-

Peter W. Moore
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region V
Office of Regional Counsel
230 South Dearborn Street
Chicago, Illinois 60604

appeared on behalf of Plaintiff,
United States of America;

1 **APPEARANCES (CONTINUED):**

2
3 **Mr. Michael R. Plankshain**
4 **Wildman, Harrold, Allen & Dixon**
5 **225 West Wacker Drive**
6 **Chicago, Illinois 60606-1229**

7 **appeared on behalf of**
8 **Penn Central Corporation;**

9
10 **Mr. David Finch**
11 **McDermott, Will & Emery**
12 **227 West Monroe Street**
13 **Chicago, Illinois 60606-5096**

14 **appeared on behalf of Standard T**
15 **Chemical Company;**

16 **Mr. Carl B. Hillemann**
17 **Sonnenschein Nath & Rosenthal**
18 **One Mercantile Center**
19 **Suite 2600**
20 **St. Louis, Missouri 63101**

21 **appeared on behalf of**
22 **Desoto, Inc.;**

23 **Mr. James T. J. Keating**
24 **Law Offices of James T. J. Keating, P.C.**
25 **Printers Row**
26 **542 South Dearborn Street**
27 **Chicago, Illinois 60605**

28 **appeared on behalf of**
29 **Premier Coatings, Inc.**

1 MR. FINCH: Back on the record please.

2 RICHARD E. ROICE,

3 having been previously duly sworn,

4 was examined and testified further as follows:

5 CROSS EXAMINATION

6 BY MR. FINCH:

7 Q. Mr. Roice, you testified before our
8 lunch break that you maintained a diary of time
9 that you spent on various matters including the
10 Midco case.

11 For how many years did you maintain
12 such a diary?

13 A. As far as I know, I started, I believe
14 I started around 1980.

15 Q. And are you still keeping that diary?

16 A. Yes.

17 Q. Do you still have copies of the diary
18 for each of the years since 1980?

19 A. Yes.

20 Well, there might be some, a missing
21 period here and there. But, as far as I know, I
22 have all of it.

23 Q. All right.

24 We would make a request at this time

1 MR. FINCH: Sure.

2 (Discussion had off the record.)

3 MR. GELMAN: Let's go back on.

4 The government will respond to Mr.
5 Finch's request and with various objections that
6 we may raise after Mr. Boice has finished --
7 after Mr. Finch is finished with Mr. Boice.

8 MR. FINCH: Just so the record is clear, as
9 far as I am concerned, my cross examination of
10 this witness will not be completed until those
11 records have been produced and I have had an
12 opportunity to question him about them.

13 MR. GELMAN: You are going to continue now,
14 though, with some other lines of questioning.

15 MR. FINCH: Yes, I am.

16 MR. GELMAN: Thank you.

17 BY MR. FINCH:

18 Q. Mr. Boice, who is Domingo,
19 D-o-m-i-n-g-o, Abella, A-b-e-l-l-a?

20 A. I already answered that question when
21 Mike Hill was questioning me.

22 Q. Okay.

23 James Adams, Jr., who is he?

24 A. Are you looking at the Midco I cost

1 for copies of those diaries, redacted if the
2 witness wishes to do so, so as to limit it to
3 Midco entries.

4 But, we would like to see the diaries
5 as they pertain to the Midco entries for all
6 periods of time for which costs relating to Mr.
7 Boice's activities are sought in this case.

8 MR. GELMAN: From Standard T?

9 MR. FINCH: No, from everybody.

10 MR. GELMAN: Even before April 1, '85?

11 MR. FINCH: Even before April 1, '85.

12 I think we are entitled to know how
13 those diaries were utilized in order to see the
14 manner in which the accuracy of records were
15 kept and to compare them with the accuracy of
16 records that may pertain to costs which are
17 attributed to us.

18 MR. GELMAN: Okay.

19 MR. FINCH: And I would ask the government
20 if they could indicate the time at which these
21 materials would be available for our review?

22 MR. GELMAN: Okay.

23 Can we go off the record here for a
24 moment?

1 summary not covered costs?

2 Q. James Adams, who is he?

3 A. I want to refer to the page you are
4 looking at.

5 Are these travel costs?

6 Q. I want to know who these people are. I
7 am not asking --

8 I know he is wondering what document I
9 am looking at, but I simply want to know who the
10 people are. I don't really wish at this time to
11 identify where I am getting these names,
12 frankly.

13 A. James Adams is the supervisor of the
14 quality assurance office, in the environmental
15 services division of USEPA, Region V.

16 Q. All right.

17 MR. GELMAN: I am going to just make a
18 general objection now as to the relevance of
19 going into each employee and what they may or
20 may not have done and the time that they have
21 done it, and each of the hours they have worked,
22 and as to each hour that they worked, what they
23 did on that day they worked to the extent that
24 Mr. Hill has already covered quite a few

1 different employees.

2 And it was determined that -- the
3 witness did testify that he could not
4 definitively say as to each hour that was put
5 specifically into Midco, what that activity was.

6 MR. FINCH: Okay.

7 MR. HILL: Or did he identify any hours that
8 he could.

9 MR. FINCH: I don't recall anything any of
10 that. I just asked who James Adams was.

11 Why don't you reserve each of these
12 little objections until such time as I ask a
13 question.

14 You may be surprised, I may not ask.

15 MR. GELMAN: I just want to make sure, we
16 went for an hour on discussing Mr. Boice's lunch
17 approximately for the past ten years.

18 I would hope we wouldn't get into the
19 same line of questioning on identifying
20 employees the way Mr. Hill did. I just don't
21 want to repeat that.

22 MR. FINCH: Can we go off the record for a
23 moment. Thank you.

24 (Discussion had off the record.)

1 MR. FINCH: Back on the record.

2 Q. Basil Anderson, who is he?

3 A. Basil Anderson?

4 Q. Yes.

5 A. I don't know who he is.

6 Q. Patricia Ashkanazy, who is she?

7 A. She is a secretary in the quality
8 assurance office of the environmental services
9 division, Region V USEPA.

10 At least she was. I'm not sure what
11 she is doing right now.

12 Q. As a secretary, she performed to your
13 knowledge clerical tasks?

14 A. Yes.

15 Q. All right.

16 William Ballard?

17 A. He is some type -- he is a
18 hydrogeologist or a groundwater specialist.

19 At the time of the Midco project he was
20 working in the water division, office of
21 groundwater.

22 Q. Linda Barney, who is she?

23 A. She is a secretary in the remedial
24 response branch USEPA, Region V.

1 Q. All right.

2 For the record that is B-a-r-n-e-y.

3 Alan K. Baumann, B-a-u-m-a-n-n. Who is
4 he?

5 A. Okay.

6 For Midco costs, he would be -- at
7 least for the later costs in 1989, he would be
8 the safety officer in the office of Superfund
9 Region V USEPA.

10 Q. Jamey, J-a-m-e-y, Bell?

11 A. He is the administrative record
12 coordinator, waste management division, USEPA.

13 Q. John Bernstein?

14 A. John Bernstein.

15 Q. B-e-r-n-s-t-e-i-n.

16 A. He works in regional counsel, Region V
17 USEPA, in maintaining files and doing other
18 tasks.

19 I am not sure exactly what his title
20 is.

21 Q. Sheri Bianchin, B-i-a-n-c-h-i-n. Who
22 is she? She spells her first name S-h-e-r-i.

23 A. Bianchin.

24 Q. I guess so.

1 A. At the time she charged hours to the
2 site, she was in the water division, drinking
3 water section, Region V, USEPA.

4 Q. Kevin Bolger. B-o-l-g-e-r.

5 A. He is in the quality assurance office,
6 Region V USEPA.

7 Q. Donald Booker. B-o-o-k-e-r.

8 A. I don't know who he is.

9 Q. Kenneth Booker. Same spelling.

10 A. I don't know who he is.

11 Q. Stephan, S-t-e-p-h-a-n, Bouchard,
12 B-o-u-c-h-a-r-d.

13 A. I don't remember who he is.

14 Q. Alicia Brown. A-l-i-c-i-a.

15 A. I am not sure.

16 Q. Patrick Churilla. C-h-u-r-i-l-l-a.

17 A. He is in the central regional
18 laboratory, Region V US Environmental Protection
19 Agency.

20 Q. Dionne Collins, D-i-o-n-n-e.

21 A. Collins. I don't know who he is.

22 Q. David Dolan.

23 A. At the time he incurred costs he was
24 in - he was in the water division and he was

1 some type of risk assessment specialist.

2 Q. Charles Elly. E-l-l-y.

3 A. He is a supervisor in the central
4 regional laboratory, Region V USEPA.

5 Q. Okay.

6 Dianne Glagler. G-l-a-g-l-e-r.

7 A. I don't remember the name.

8 Q. Gilbert Frye. F-r-y-e.

9 A. He is a chemist in the central regional
10 laboratory, USEPA.

11 Q. Cynthia Fuller. F-u-l-l-e-r.

12 A. She is in the Great Lakes National
13 Programs Office, Region V USEPA.

14 Q. Arthur Paul Gasior. G-a-s-i-o-r.

15 A. Gasior.

16 Q. All right.

17 A. Before he retired, he was in public
18 affairs office, Region V USEPA.

19 Q. Public affairs?

20 A. Right.

21 Q. Is that publicity and stuff like that?

22 A. That is handling public meetings,
23 handling contacts with the public.

24 Q. Sylvia Griffin, who is she?

1 A. I believe she works for the -- when the
2 cost were incurred, she worked for the central
3 regional laboratory, Region V.

4 Q. Kenneth Gunter. G-u-n-t-e-r.

5 A. I don't know who he is.

6 Q. Richard Hackley, is that the same
7 Richard Hackley?

8 A. Yes.

9 Q. Timothy Henry, who is he?

10 A. He is a supervisor.

11 I think he is in the permits section,
12 water division Region V.

13 Q. Soobok Hong. S-o-o-b-o-k, H-o-n-g.

14 A. She was a quality assurance project
15 plan coordinator in the office of Superfund,
16 Region V USEPA.

17 Q. Anthony James?

18 A. I don't remember.

19 Q. Andrea J-i-r-k-a, Jirka,

20 A. She is a supervisor in the central
21 regional laboratory.

22 Q. Robert Jones?

23 A. When the costs were incurred, he was
24 the safety officer for the Office of Superfund,

1 **Region V USEPA.**

2 Q. Amberina Khan. K-a-h-n.

3 A. I don't remember her.

4 Q. Sukwha Kim. S-u-k-w-h-a, K-i-m.

5 A. I don't remember.

6 Q. Robert Lee.

7 A. I don't remember.

8 I think he is a chemist in the central
9 regional laboratory.

10 Q. Ida Levin. L-e-v-i-n.

11 A. She is in the quality assurance office.

12 Q. Ricky Matheny. M-a-t-h-e-n-y.

13 A. Matheny. I don't remember him.

14 Q. Neal Meldgin. M-e-l-d-g-i-n.

15 A. He was a remedial project manager,
16 Office of Superfund, USEPA.

17 Q. Peter Moore?

18 A. Peter Moore is in regional counsel.

19 Q. That is --

20 A. Yes. That is Peter Moore.

21 Q. Erin Moran. E-r-i-n Moran.

22 A. Okay.

23 She is in the technical support unit.
24 She is at risk assessment specialist, Office of

1 Superfund, Region V USEPA.

2 Q. John Morris?

3 A. He is a supervisor in the central
4 regional laboratory.

5 Q. Patricia Morris?

6 A. I don't remember her.

7 Q. Joseph Paisie, P-a-i-s-i-e.

8 A. I don't remember him.

9 Q. Pankaj J. Parikh. P-a-n-k-a-j, J.,
10 P-a-r-i-k-h.

11 A. Would you repeat that?

12 Q. Do you want me to spell it again?

13 A. I am not sure you are pronouncing it.

14 MR. GELMAN: Can you show him the document?

15 A. No, I don't remember that.

16 BY MR. FINCH:

17 Q. Stephen Parker?

18 A. I don't remember.

19 Q. Babu Paruchuri. B-a-b-u, last name
20 P-a-r-u-c-h-u-r-i.

21 A. At that time he charged hours to the
22 site he was in the quality assurance office.

23 Q. Raymond Paus. P-a-u-s.

24 A. I don't remember him.

1 Q. Let me ask you just about Babu. He was
2 in the quality assurance office?

3 A. Yes.

4 Q. Does that mean he did work relating to
5 quality assurance at the site?

6 A. He was involved in review of the
7 quality assurance project plan submitted by the
8 defendants.

9 Q. Just the QAPP itself?

10 A. And he had some follow-up work on the
11 site reviewing some of the on-site analyses and
12 seeing whether they were actually being
13 conducted in accordance with the QAPP as
14 approved by USEPA.

15 Q. So Babu is a government official who
16 would know whether the groundwater sampling data
17 was or was not conducted in a manner consistent
18 with the QAPP?

19 MR. GELMAN: I would object to the form as
20 well as getting into some areas both on
21 record-review and as well as the
22 deliberative-process privilege, as part of a
23 general type question, in that area.

24 MR. FINCH: Are you instructing him not to

1 answer?

2 MR. GELMAN: Object to that question in the
3 way it is formed.

4 Yes. I am instructing him not to
5 answer.

6 MR. FINCH: Let me continue on.

7 Q. Do you know, Mr. Boice, whether the
8 government is charging any of the defendants for
9 any effort to determine whether the groundwater
10 sampling data was gathered and analyzed in a
11 manner consistent with the QAPP?

12 A. Yes.

13 Q. Okay.

14 Whose time comprises those costs, do
15 you know that?

16 A. Okay.

17 MR. GELMAN: That would be the same
18 objection. As far as the general people that
19 may be involved in that, I think he can answer.
20 I am not instructing him not answer that.

21 MR. FINCH:

22 O. Who are the people whose time were
23 comprised in those cost?

24 A. Most of the oversight of sampling was

1 conducted by Roy F. Weston, Inc.

2 I was on site a few times myself and
3 observed the sampling, some sampling. Babu, his
4 review was strictly of some on-site chemical
5 analyses that were conducted.

6 Q. Okay. That answers my question.

7 Who is Raymond Paus? P-a-u-s.

8 Did I ask you that?

9 A. I don't know who he is.

10 Q. David Payne. P-a-y-n-e.

11 A. He is a chemist in the quality
12 assurance office.

13 Q. All right.

14 P-r-a-n-a-s, P-r-a-n-c-k-e-v-i-c-u-i-s.

15 A. He is a technical person in the Great Lakes
16 National Program Office.

17 Q. Connie Puchalski. P-u-c-h-a-l-s-k-i.

18 A. She is a supervisor in regional
19 counsel.

20 Q. Abeer Outub. A-b-e-e-r.

21 A. I don't know who he is.

22 Q. Q-u-t-u-b.

23 A. I don't know.

24 Q. Hilda Roldan. R-o-l-d-a-n.

1 A. I'm not sure who she is.

2 Q. Melvin Ross, Jr.?

3 A. I don't know who he is.

4 Q. You are sure you don't know who Melvin
5 is?

6 A. Melvin Ross.

7 Q. This indicates there is over 204
8 payroll hours he put into this project.

9 You don't know who he is?

10 A. No. No, I don't remember who he would
11 be.

12 Q. Were you RPM during fiscal years '85,
13 '86 or '87?

14 A. Yes.

15 Q. I am concerned that you don't know who
16 somebody who has put in over 200 hours in this
17 project is during a period of time that you were
18 RPM.

19 Is there any way you could refresh your
20 recollection as to that?

21 A. Yes. I probably --

22 No. I mean, I don't know who he is,
23 but I could probably find out.

24 Q. I just make a request that you do so

1 and that before the deposition is closed out,
2 you find out who he is.

3 MR. GELMAN: If he can refer to documents
4 you mean to find out who this person is?

5 MR. FINCH: He can ask somebody, I don't
6 know. I just want to know who he is. Then I
7 want to figure out how come he doesn't remember
8 who he is as he sits here now.

9 A. That's right. The documents would
10 indicate what office he would be working, if you
11 want to refer to the documents.

12 Q. Errick, E-r-r-i-c-k, Sadler, who is he?

13 A. I don't remember.

14 Q. Larry Schmidt. S-c-h-m-i-d-t.

15 A. I don't remember.

16 Q. George Schupp. S-c-h-u-p-p.

17 A. I don't remember.

18 Q. Marilyn Shannon?

19 A. I don't remember.

20 Q. Lawrence Shepard. S-h-e-p-a-r-d.

21 A. I think he was an employee in the water
22 division.

23 Q. Tyra, T-y-r-a, Short?

24 A. I don't remember.

1 Q. Vanessa Simmons. S-i-m-m-o-n-s.

2 A. She is in the removal program. She is
3 an on scene coordinator.

4 Q. Diane Spencer, who is she?

5 A. She is -- at the time the cost were
6 incurred, she was a technical person in the RCRA
7 branch.

8 Q. Do you know what types of work she did
9 in this project?

10 A. Yes. She reviewed the feasibility
11 study and possibly the proposed plan for
12 compliance with ARARS and for anything relevant
13 to the RCRA program.

14 Q. Chi Tang, C-h-i, T-a-n-g.

15 A. He is in the quality assurance office.

16 Q. Darius Taylor. D-a-r-i-u-s.

17 A. He is in the financial management
18 branch.

19 Q. Melvina Taylor?

20 A. She is a secretary in the office of
21 Superfund.

22 Q. J-a-y-a-n-t-i-l-a-l, last name
23 T-h-a-k-k-a-r?

24 A. He is a chemist in the central regional

1 laboratory.

2 Q. Francis Thomas?

3 A. He might be in the central regional
4 laboratory.

5 Q. Mary Thomas?

6 A. I don't remember.

7 Q. Cheng-Wen Tsai. C-h-e-n-g-W-e-n,
8 T-s-a-i.

9 A. He is in the quality assurance office.

10 Q. Susan Lee Weimer. W-e-i-m-e-r.

11 A. I don't remember her.

12 Q. Dennis W-e-s-o-l-o-w-s-k-i.

13 A. At the time the costs were incurred, he
14 was in the central regional laboratory.

15 Q. Glenn Wittiman. W-i-t-t-i-m-a-n.

16 A. He is in the office of groundwater,
17 water division.

18 MR. FINCH: Let's go off the record for a
19 moment, please.

20 (Discussion had off the record.)

21 MR. FINCH: Off the record there was a
22 discussion among counsel as to Standard T's
23 request of Mr. Boice or of the government that
24 Mr. Boice's diary be produced.

1 Counsel would like to state the
2 government's position for record, please.

3 MR. TENENBAUM: We will take your request
4 under advisement.

5 And we will make a corresponding
6 request from you for the -- if you will get back
7 to us as to whether you want to produce the
8 diaries for Mr. Ball or any Standard T employee
9 who has any diaries that would reflect the
10 sending of materials to the Midco sites or
11 anything like that.

12 I guess the same request would go other
13 defendants, too.

14 MR. FINCH: Let's go off the record for a
15 second.

16 (Discussion had off the record.)

17 Back on the record, please.

18 There are no discovery requests of
19 which I am aware at present where we have
20 objected to the production of diaries or any
21 other specific material on grounds that diaries
22 or related materials are not producible.

23 So the record is clear, in view of the
24 statement Mr. Tenenbaum made, Standard T has no

1 intention of objecting to the production of
2 diaries simply because they are diaries. So
3 long as --

4 MR. TENENBAUM: I am not aware of any
5 production of diaries by any of the defendants.

6 MR. FINCH: I am not aware that any diaries
7 contain information that is relevant to any
8 request either. But --

9 MR. TENENBAUM: I will take your request
10 under advisement.

11 MR. FINCH: I am not too sure, Alan, that
12 that is satisfactory.

13 But, I am not going to be able to get
14 you to say more than that today, I am sure.

15 As far as Standard T is concerned, it
16 has not had an opportunity fully to cross
17 examine Mr. Boice, because these diaries have
18 not been made available to it thus far.

19 As far as we are concerned this
20 deposition is open until we have an opportunity
21 to review these diaries and to cross examine
22 this witness on them.

23 If the United States wishes to insist
24 upon an additional Rule 34 request from Standard

1 T, in order to perfect its request for these
2 diaries, I would like that stated for the record
3 so that we can provide that paper to the United
4 States.

5 If it doesn't insist upon a written
6 Rule 34 request for the diaries, we would expect
7 to have those diaries made available to us
8 before this deposition is closed out.

9 If there is any effort by the United
10 States to close this deposition without having
11 produced the diaries, we will respond
12 accordingly.

13 MR. TENENBAUM: We will take your request
14 under advisement.

15 We will add that to the long list of
16 discovery items that counsel needs to
17 discover -- our discovery request and your
18 discovery request, that may be outstanding.

19 I would be very much surprised if there
20 would be any need to reopen this deposition to
21 further questioning, but we will take your
22 request under advisement and let you know
23 accordingly.

24 MR. FINCH: Let's be clear in nomenclature.

1 We do not intend to reopen this
2 deposition. As far as we are concerned, this
3 deposition will not close until we have had an
4 adequate opportunity to cross examine this
5 witness.

6 MR. TENENBAUM: It will be our position that
7 the deposition will be closed and subject to
8 your request that we re-evaluate that and permit
9 it to be reopened, and we will get back to you
10 on that.

11 MR. FINCH: I am done.

12 MR. HILL: Speaking for Insilco, I would
13 like to join in Mr. Finch's objections and
14 statements he made.

15 To the extent that you want to use Mr.
16 Boice's diaries or any other information that is
17 going to show the goods or services that were
18 received for the expenditures for which you seek
19 response costs from Insilco, I would ask that
20 you produce those documents to us, as a
21 compromise measure, let's try to say within the
22 next two weeks.

23 MR. TENENBAUM: If we intend to use them as
24 evidence, we will certainly produce them.

1 MR. HILL: Within the next two weeks.

2 MR. TENENBAUM: We will add this to the list
3 of outstanding items.

4 Discovery is not a one-way street. We
5 have a lot of outstanding items that we are
6 waiting for from the defendants. We will be
7 glad to meet with you to discuss that.

8 We are not going to be discussing a
9 schedule for one-way discovery. We are going to
10 have to have a meeting in which all sides will
11 provide dates and other agreements.

12 MR. HILL: Our position has been made known.

13 MR. HILLEMANN: Desoto joins in that
14 position as well.

15 MR. HILL: Any other questions?

16 I have a few follow-up questions to Mr.
17 Finch's questions.

18 MR. TENENBAUM: I don't know what a few
19 means, but we do object to questioning on
20 redirect that is not within the scope of
21 redirect on adverse cross examination.

22 MR. FINCH: Pardon me.

23 Would you repeat that? Or could I have
24 the reporter -- I didn't understand what you

1 said.

2 MR. TENENBAUM: Insilco has had their
3 opportunity to ask questions.

4 MR. FINCH: That's right. That is on direct
5 examination.

6 MR. TENENBAUM: That is called direct
7 examination.

8 I am not aware of any adverse cross
9 examination to Insilco taking place here today.

10 I don't believe that Insilco is
11 entitled to ask further questions at this
12 deposition. If it doesn't take that long, we
13 won't instruct him not to answer, subject to
14 other objections we may make.

15 If it is going to not take a long time
16 we will permit him to answer.

17 MR. HILL: If we can limit the dialogue, it
18 will take five minutes.

19 MR. TENENBAUM: Okay.

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REDIRECT EXAMINATION

BY MR. HILL:

Q. Mr. Boice, what time do you get to work in the morning?

A. Around 7:45 to 8:00 o'clock.

Q. What time do you leave?

A. Normally between 5:30 and 6:00 o'clock.

Q. Okay.

How do you get back and forth from work?

A. I take the Congress train.

Q. Okay.

Back to your timesheets. You indicated it is Bates numbers 1254 and 1256.

Is it your position, sir, that every day you worked 9 hours or 8 hours as those timesheets reflect?

A. I have already testified regarding that.

Q. That doesn't mean you don't have to answer the question.

Just answer it yes or no.

A. But it does mean that we are wasting a little time here.

1 Q. I don't think we are, if you could
2 answer the question.

3 MR. TENENBAUM: Is your question every day
4 on those two timesheets or every day throughout
5 the five years or whatever the period is?

6 MR. HILL: We will start with the two
7 timesheets.

8 A. That's what it indicates, yes.

9 Q. Okay. That's not the question.

10 A. What is the question?

11 Q. Does it accurately indicate the number
12 of hours that you worked on those days?

13 A. Well, as I stated before, a lot of
14 times I spent extra time, more than required.
15 So I may have worked more hours than indicated
16 on this timesheet.

17 Q. But you never worked less, you never
18 worked a 7-hour day, you always work on the job
19 at least 8 hours per day, is that correct?

20 MR. GELMAN: You are referring to these time
21 periods?

22 MR. HILL: That's right.

23 A. With very few exceptions, I am at work
24 during at least the required number of hours per

1 day.

2 O. Okay.

3 But if I wanted to check that against
4 your timesheets and against not just those two
5 time sheets but other timesheets that you
6 provided to us, I could do that by looking at
7 your diary; is that right?

8 A. You could get a pretty good idea, yes.

9 Q. Okay.

10 Now, are there other people for whom
11 EPA is seeking costs that might have a diary or
12 some other additional information that you have
13 not yet produced that would describe the work
14 that they performed?

15 A. You mean a work diary.

16 Q. Diary or any other information that
17 might provide more information than you have
18 already provided as to the work that was
19 performed for which you are seeking costs from
20 Insilco?

21 A. Other than what the timesheets --

22 Q. Other than what you have already
23 provided.

24 A. Oh. Other than what we have already

1 produced to the defendants you mean?

2 Q. That's right.

3 A. There were some internal memos and so
4 forth that indicated their reviews of certain
5 documents.

6 Q. Okay.

7 Would you produce those, please? I
8 will mark make request to counsel that you
9 produce those.

10 MR. TENENBAUM: Off the record just a
11 second.

12 (Discussion had off the record.)

13 MR. HILL: Back on the record.

14 Q. Are there any other documents?

15 A. Besides what?

16 Q. Besides the memos which you just
17 mentioned or the documents that you have already
18 produced to defendants?

19 A. Not that I am aware of.

20 Q. Okay.

21 MR. TENENBAUM: As he has indicated, there
22 are additional documents that we are going to be
23 producing shortly.

24 MR. HILL: Today, is that right?

1 MR. TENENBAUM: We hope they will be ready
2 by the end of the day. They are being copied.
3 We have a lot of problems copying at EPA.

4 BY MR. HILL:

5 Q. Now, you mentioned an employee named
6 C-h-u-r-i-l-l-a worked in an EPA lab; is that
7 right?

8 A. Yes.

9 Q. Okay.

10 There were a number of other employees
11 that worked in the lab as well, right?

12 A. Yes.

13 Q. Did they actually do sample analyses?

14 A. No, normally not.

15 Q. What did they do?

16 A. It depends.

17 But, one thing they did is they
18 participated in review of the quality assurance
19 project plan for the remedial investigation
20 conducted by Geosciences, and they might have
21 participated in review or auditing the data
22 assessment procedures by Geosciences.

23 As I mentioned before, Babu audited
24 some on-site analytical activities, being

1 conducted by Geosciences.

2 Q. Babu didn't work in the lab, Babu
3 worked in the QA office, right?

4 A. Oh, that's right, okay.

5 Q. If I wanted to know what people in the
6 lab did for which you are seeking costs, how
7 would I find that out?

8 A. Well, you just asked me and I am
9 telling you what they did.

10 They participated in review of the
11 quality assurance project plan. They audited
12 data assessment procedures by Geosciences. They
13 might have participated in review of the Fish &
14 Wildlife Service data, or the validation of the
15 data produced by -- in the study by the US Fish
16 & Wildlife Service.

17 Q. They might have, but you don't know on
18 any particular day what they did, do you?

19 A. That's correct, I wasn't their
20 supervisor.

21 Q. Okay.

22 A. And also they might have participated
23 in the review of data generated from the program
24 for the Midco II removal.

1 Q. Okay.

2 Your lab did no sample analyses for
3 which you are seeking costs?

4 A. You mean the central regional
5 laboratory?

6 Q. Any EPA lab.

7 A. No.

8 Q. What is the Great Lakes National
9 Program for which employee Fuller worked?

10 A. It is a separate office within US EPA
11 for conducting research, and I think
12 coordinating issues related to the Great Lakes
13 in Region V.

14 Q. Can you be more specific?

15 A. I don't remember. I don't know that
16 much more about it.

17 Q. You couldn't be more specific?

18 A. No.

19 Q. Okay.

20 Just so I can get an idea of how you
21 might split your costs from site to site. How
22 will you split your costs for your deposition
23 today?

24 A. I would split it fifty-fifty.

1 MR. HILL: I have no further questions.

2 MR. TENENBAUM: We don't waive signature.

3 MR. HILL: That is it. Thanks, Mr. Boice.

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DEPOSITION ADJOURNED

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